

NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

PHILIP T. McLAUGHLIN
ATTORNEY GENERAL

BIENNIAL REPORT

for the period
July 1, 1999 through June 30, 2001

JEANNE SHAHEEN
GOVERNOR

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I. FUNCTION, ORGANIZATION, AND ADMINISTRATION

A. FUNCTION AND ORGANIZATION

The Attorney General is a constitutional officer, Part 2, Article 46 of the Constitution of the State of New Hampshire. The Attorney General is the State's chief legal officer and the State's chief law enforcement officer. The Attorney General acts as the State's attorney in all civil and all criminal cases in the Supreme Court, and is responsible for the general supervision of all criminal law enforcement in this State. RSA 7:8, RSA 21-M:2,II. The Attorney General is responsible for the prosecution of all crimes which may be punished by death or life imprisonment. RSA 7:6. The Attorney General is responsible for the enforcement of New Hampshire's consumer protection and antitrust laws and environmental protection laws, RSA 7:8-a, and for the administration and enforcement of New Hampshire's charitable trust and solicitation laws, RSA 7:19.

The responsibilities of the Attorney General "are broad and numerous. Some grow out of the common law, and many are specified by statute." *State v. Swift*, 101 N.H. 340 (1958). The Attorney General has "ultimate responsibility for criminal law enforcement" in New Hampshire and for "supervision of criminal causes pending before the Supreme and Superior Courts." *Wyman v. Dana's*, 101 N.H. 487 (1958). The Attorney General has the responsibility "to manage the State's litigation" in civil matters and to "make any disposition of a case which he deems is in the state's best interest." *Opinion of the Justices*, 117 N.H. 393 (1977).

There are two primary Divisions within the office:

- Division of Public Protection (RSA 21-M:6)
 - Criminal Justice Bureau (RSA 21-M:8)
 - Consumer Protection Bureau (RSA 21-M:9)
 - Environmental Protection Bureau (RSA 21-M:10)
- Division of Legal Counsel (RSA 21-M:7)
 - Bureau of Civil Law (RSA 21-M:11)
 - Transportation and Construction Bureau (RSA 21-M:12)

Other functional units within the Department include: the Administrative Office, headed by the Director of Administration (RSA 21-M:5); the Charitable Trust Unit, headed by the Director of Charitable Trusts (RSA 7:20); the Office of the Chief Medical Examiner (RSA 611-A); the Office of Victim/Witness Assistance, headed by the Director of Victim/Witness Assistance (RSA 21-M:8-b); the Drug Task Force, headed by the Drug Task Force Director; the Medicaid Fraud Control Unit (RSA 21-M:8-a);

The Attorney General is the State's chief legal officer and chief law enforcement officer. The Attorney General acts as the State's lawyer in all civil and criminal cases in the Supreme Court, and is responsible for the general supervision of all criminal law enforcement in New Hampshire.

and the Homicide Prosecution Unit (RSA 7:6). A departmental index is provided on the Attorney General website, www.state.nh.us/nhdoj. The website also includes this report, the Right-to-Know Memorandum and other features.

B. ADMINISTRATION

1. Program Administration

The New Hampshire Department of Justice administers a variety of programs which provide service to all areas of New Hampshire's criminal justice system. These programs are supported by federal, state, and dedicated funds and are administered by the following units:

Witness Payment Unit. Since 1992, this agency has had the responsibility for paying witnesses who appear on behalf of the State in criminal cases. In FY 2000, we processed payments for 19,856 police witnesses for a total of \$614,893.18 and 9,495 civilian witnesses for \$146,643.38. In FY 2001, 17,691 police witnesses were paid \$554,274.90 and 8,031 civilian witnesses were paid \$124,762.23.

Victim Compensation Unit. In 1990, New Hampshire embarked upon a program to assist in the reimbursement of innocent victims of crime. A Victim Assistance Commission was established and consists of five individuals who are nominated by the Attorney General and confirmed by the Governor and Executive Council. This program is funded by money collected through the penalty assessment on fines and by a federal grant. In FY 2000, the Commission awarded 254 claims totaling \$197,367.48. In FY 2001, 300 awards were made, totaling \$341,224.55.

2. Grants Management Unit

This Unit acts for the Attorney General in providing administration and oversight of a number of grant programs focused on crime prevention and justice and is supported by state and federal funds. The federal grant programs are administered through the federal Department of Justice, Department of Health and Human Services and Department of Education.

The Grant's Unit, at the direction of the Attorney General, has participated fully in Governor Shaheen's child protection initiative under the auspices of the Governor's Kid's Cabinet. The Justice Department is a co-funder, in cooperation with the Department of Health and Human Services, of the After School Program initiative. The Department is also, as a Kid's Cabinet member, a co-funder with the New Hampshire Charitable Foundation and New Futures of a statewide youth mentoring initiative that has resulted in the founding of the Granite State Youth Mentors. This charitable corporation is a first-in-the-nation model for state/private partnerships in the mentoring arena.

The New Hampshire Department of Justice administers a variety of programs which provide service to all areas of New Hampshire's criminal justice system.

Among the grant programs administered through the Attorney General's Grant Management Unit are the following:

- Victim/Witness Assistance (100% penalty assessment funds)

In addition to supporting the Victims Compensation Program, funds collected through the statutory criminal fine penalty assessment are also used to support the continuation of victim/witness units in County Attorneys offices in Belknap, Carroll, Cheshire, Coos, Grafton and Sullivan counties.

- Victims of Crime Act/Crime Victim Assistance (100% federal funds)

The Victims of Crime Act authorizes funding to states to support programs that provide direct services to crime victims, with sexual assault, spousal abuse and child abuse programs identified as priority areas. The State of New Hampshire received \$1,981,000 in FY 2000 and \$1,947,000 in FY 2001. Generally in New Hampshire, these grant funds have been awarded to agencies providing direct services to adult and child victims of sexual abuse, physical abuse, and incest, and to other programs designed to assist victims of violence and trauma. The majority of these grants have gone to member agencies of the NH Coalition Against Domestic & Sexual Abuse. Other funds have been used to support programs such as a Court-Appointed Special Advocates Program, Mental Health Programs, and Victim-Offender Mediation programs.

- Violence Against Women Act Grants (100% federal funds)

Grant funds under the Violence Against Women Act are provided under a formula designed to provide subgrants to law enforcement, prosecutors and victim services agencies in order to combat violent crimes against women. The State received \$952,000 in FY 2000 and \$950,000 in FY 2001 from this grant program. Awards made under this program follow an implementation plan developed after consultation meetings held in all ten counties. Subgrants from this program have generally been issued to support projects in three areas: 1) the creation of specialized domestic and sexual violence units within law enforcement and prosecution offices; 2) the enhancement of victims services programs, such as victim advocacy and emergency legal representation; and 3) the expansion of efforts that serve to train and coordinate the State's response to violence against women. One example of a specific project is the support of the Domestic Violence Team in Manchester, which is a joint effort between the local prosecutor and police. In addition to this formula grant program,

Grant programs administered by the Attorney General include those which support victim/witness units in the counties, services to victims of violence, sexual assault, and child abuse, and state, county, and municipal criminal justice programs.

New Hampshire receives funding from two Rural Domestic Violence and Child Victimization Discretionary Grants. One grant is utilized by the NH Coalition Against Domestic and Sexual Violence and the Division for Children, Youth and Families to implement the Domestic Violence Enhancement Project in the northern counties. Approximately \$1,100,000 has been received for this project to date. The second grant is utilized by Whole Village in Plymouth to run a supervised visitation center. This project has received approximately \$118,000 to date.

- Combating Underage Drinking Program (100% federal funds)

The State of New Hampshire received \$360,000 in FY 2000 from the Enforcing the Underage Drinking Laws Program to support and enhance state efforts, in cooperation with local jurisdictions, to enforce laws prohibiting the sale of alcoholic beverages to, or the consumption of alcoholic beverages by, minors. Subgrants have been given to the NH Teen Institute for the establishment of a community development staff member position to work with groups of kids on underage drinking issues, and to the NH Bureau of Liquor Enforcement for additional training to licensees and also for increased compliance checks. In addition, law enforcement task forces for the areas surrounding the three largest colleges in New Hampshire have received funding to increase enforcement and education activities in those communities. These grants have, for example, allowed UNH Durham to conduct a significant educational/enforcement exercise during the graduation season. Law enforcement task forces in the regions beyond the three largest colleges have also received funding under this program.

- Byrne Formula Grant Program (100% federal funds)

The Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program allocates federal funds to states based on a modified population based formula. The State of New Hampshire received \$3,076,361 in FY 2000 and \$3,101,368 in FY 2001. Each state must develop a strategic, multiyear violence prevention and drug control strategy to demonstrate that funds will be used in accordance with the twenty-six purposes allowed by law. New Hampshire has funded a variety of programs from these grant funds, including drug enforcement through the New Hampshire Multi-jurisdictional Drug Task Force, drug education through the DARE program, forensic laboratory enhancements, criminal justice records improvement, alternatives to incarceration, youth-at-risk crime prevention programs, school resource officer programs, and mentoring. The Attorney General is directing new grants in this area toward youth at risk and for programs which have both local support and a scientific basis for success.

The federal Byrne Grant Program provided more than \$6 million for violence prevention and drug control initiatives in New Hampshire during the biennium.

- Local Law Enforcement Block Grant Program (100% federal funds)

Federal funds in the amount of \$304,720 were received from the Local Law Enforcement Block Grant Program in FY 2000 and \$274,999 for FY 2001. The purpose of this program is to provide funds to local units of government to reduce crime and improve public safety. Subgrant programs included the purchase of police equipment and technology, school security enhancements, police overtime and crime prevention activities. Chief among the activities funded under this program has been assisting local law enforcement agencies in purchasing records management systems capable of reporting to the FBI's National Incident Based Reporting System.

- State Identification Systems Grant Program (100% federal funds)

New Hampshire's portion of the State Identification Systems Grant Program was \$172,727 in FY 1997 and \$194,710 in 1998. The funding may be utilized for computerized identification systems that are compatible and integrated with the databases of the FBI's National Crime Information Center, DNA forensic laboratory analysis that is compatible and integrated with the FBI's Combined Index System, and automated fingerprint identification systems that are compatible and integrated with the FBI's Integrated Automated Fingerprint identification System. The State has utilized this funding to assist the State Police Forensic Laboratory in attaining DNA analytical capabilities. In addition to these funds, Byrne Grant funds have provided more than \$750,000 for the State's DNA laboratory. FY 1998 was the last year of funding under the State Identification Systems Grant. The program operated through calendar year 2000.

- National Criminal History Improvement Program (100% federal funds)

The funding from the National Criminal History Improvement Program, which amounted to \$381,073 for New Hampshire in FY 2000 and \$407,462 for FY 2001, is designed to assist states in enhancing the quality, completeness and accessibility of the nation's criminal history record systems. Enhancing the timeliness and accuracy of criminal records is the main goal of this program. The grant funding from this program has been utilized to develop the State's Criminal Justice Information System, facilitate participation in the National Crime Information Center's Interstate Identification Index System, and develop a Tri-State Automated Fingerprint Identification System that is compatible with the FBI's Interstate Automated Fingerprint Identification System. In addition, included under this program office was the National Sex Offender Registry Assistance Program, which provided the State with

The computerization, automation, and integration of criminal history, fingerprint, and DNA identification advanced dramatically during the biennium.

\$210,000 in FY 1998 to fund a project to enhance the State's sexual offender registry to be compatible with the Criminal Justice Information System.

- Statistical Analysis Center (100% federal funds)

The Statistical Analysis Center grant program provides funding to states to encourage capabilities for the collection, analysis, and dissemination of criminal justice statistical information. The State received \$99,526 in FY 2000. The NH Department of Justice has been working collaboratively with the Northern New England Consortium for the study of the Prevention and Control of Crime, also known as Justiceworks. The latest project was the local implementation of the National Crime Victimization Survey.

- Residential Substance Abuse Treatment for State Prisoners (100% federal funds)

The State received \$316,029 in FY 2000 and \$314,244 in FY 2001 from the Residential Substance Abuse Treatment for State Prisoners grant program in order to support the implementation of residential substance abuse treatment programs within correctional and detention facilities. The grant award supports the treatment programs at the New Hampshire State Prison and Lakes Region Facility and the State's Youth Development Center.

- Violent Offender Incarceration and Truth-in-Sentencing (100% federal funds)

Funding to New Hampshire from the Violent Offender Incarceration and Truth-in-Sentencing grant program totals approximately \$12,980,601 to date and must be utilized to build or expand correctional facilities and jails to increase secure confinement space for violent offenders. New Hampshire has yet to commit these funds to a specific project, but plans that the funding be utilized to build or expand temporary or permanent correctional facilities for the confinement of convicted violent juvenile offenders or for the confinement of convicted nonviolent juvenile offenders to free existing space for the confinement of violent juvenile offenders.

- Youth Offender Program (100% federal funds)

The Youth Offender Program is administered from the federal Department of Education and in FY 2000 the grant fund amount was \$33,152. The grant funds are to be used to provide postsecondary education, postsecondary vocational training, and related services to

New Hampshire has received more than \$12 million towards the confinement of violent offenders.

“youth offenders” up to age 25, who are incarcerated in a state prison, including a pre-release facility, and are eligible for parole or release within five years. In New Hampshire, the grant funds have been subgranted to the Department of Corrections to fund tuition, books and related materials for youthful offenders enrolled in Capitol Branch, New England College, and Castle College courses through the New Hampshire State Prison for Men and the New Hampshire State Prison for Women.

C. OFFICE OF VICTIM/WITNESS ASSISTANCE

The Office of Victim/Witness Assistance is committed to ensuring that all victims of crime in New Hampshire are treated with the dignity and respect that they deserve and continues to work to improve the system's response to these issues.

The Office of Victim/Witness Assistance was created legislatively in 1987 to provide 24-hour direct services and support in all of the State's homicide cases, to standardize services for victims of crime statewide, and to provide training to the professionals involved. Services range from providing death notification and crisis intervention at homicide scenes to providing services and support throughout the entire criminal justice process, including post-conviction, sentence reduction, and parole hearings. The goal of the office is to ensure that the rights of victims of crime are protected and to reduce the impact that the crime and the resulting involvement in the criminal justice system have on the lives of victims and witnesses. Victim/Witness personnel also provide consultation and training to the county victim/witness programs as well as intervention and referrals in response to calls and requests from citizens.

The Office has two full-time victim/witness advocates. When a homicide occurs anywhere in the State, an advocate responds to the scene and is responsible for notifying the victim's family of the death of their loved one and for working with the family and with witnesses through the investigation, trial, and post sentencing phases of a homicide prosecution. From July 1999 through June 2001, the advocates responded to 26 homicides, 15 of which involved family violence, including five children who were under six months old.

In every homicide, each family requires countless hours of support and services as their case moves through the long and often confusing criminal justice system. The advocates in this Office, and victim/witness advocates statewide, face the suffering and stress of victims and witnesses every day, but continue to meet the demands for their services with a strong sense of commitment.

In addition to providing direct services, the Office is responsible for numerous statewide projects that strive to standardize services and support to victims. The Director of the Office represents the Attorney General on numerous committees and statewide projects including: (1) chairing the Sexual Assault Protocol Committee which recently completed *Sexual Assault: A Protocol for Law Enforcement Response and Investigation of Adult Sexual Assault cases*. Six regional training programs for law enforcement are being planned for March 2002; (2)

The Office of Victim/Witness Assistance provides 24-hour support and direct services to victim families and witnesses in all of the State's homicide cases.

chairing the Protocol and Conference Committee of the Governor's Commission on Domestic and Sexual Violence which developed 16 multidisciplinary protocols on the handling of domestic violence cases and introduced those protocols at various regional training programs for over 1500 professionals. The Committee continues to address other disciplines and recently developed new Protocols for Elder Care Providers, Home Health Care Providers, Emergency Medical Technicians and one on the community response to domestic violence. The Committee organizes and sponsors an annual Spring Statewide Conference for over 500 participants; (3) Executive Committee member of the Child Fatality and the Domestic Violence Fatality Review Committees, which review all cases of child and domestic violence deaths in the State and make recommendations for systemic improvements to prevent future fatalities; (4) Partner on the AmeriCorps Victim Assistance Program Advisory Board which provides trained advocates to work full-time in district courts, crisis centers, and police prosecutor's offices; (5) Chairing of the Sexual Assault Nurse Examiner Program Advisory Committee, which has trained and certified over 70 nurses to become experts in sexual assault and child sexual abuse forensic examinations; (6) Chairing the New Hampshire Crime Victims Rights Week Committee, which organizes the annual commemoration of victim rights, taking place every April; (7) Member of the Domestic Violence Health Initiative Leadership Team, which is responsible for conducting domestic violence training for all of the State's medical personnel; (8) Member of the Interbranch Criminal and Juvenile Justice Council; and (9) Member of the Court Improvement Project Advisory Board.

The Attorney General's Task Force on Child Abuse and Neglect was created in 1989, with the Director of Victim/Witness Assistance as its Chair. This multidisciplinary task force, funded through a federal Children's Justice Act grant, is dedicated to improving the investigation and prosecution of child abuse and neglect cases in New Hampshire. Task Force projects include: developing and updating multidisciplinary protocols on the identification, investigation, prosecution and treatment of child abuse and neglect; sponsoring an annual conference for approximately 450 professionals every fall; sponsoring monthly, day long advanced training sessions for various disciplines; establishing video-equipped interview rooms in several counties; distributing a videotape for sexually abused children to alleviate their fear of the medical examination; and developing two booklets for teenagers and young children to assist them during their involvement in the court system.

In partnership with Governor Shaheen's Office and the State Employee Assistance Program, the Office of Victim/Witness Assistance has recently been involved in the creation and implementation of a State

The Attorney General's Task Force on Child Abuse and Neglect is a multidisciplinary task force dedicated to improving the investigation and prosecution of child abuse and neglect cases in New Hampshire.

Domestic Violence in the Workplace Policy, which was introduced to all state employees in October 2000, along with a Guide for State Employee's brochure and informational outreach posters. Each state agency was asked to designate a Domestic Violence Liaison to be responsible for the implementation of the project within their agency. The Office sponsored two daylong training sessions for these liaisons along with security personnel. This was followed by three additional training sessions for state agency supervisors and other staff. Additional training sessions for specific agency personnel are currently being planned. New Hampshire is one a handful of states to have initiated such a project.

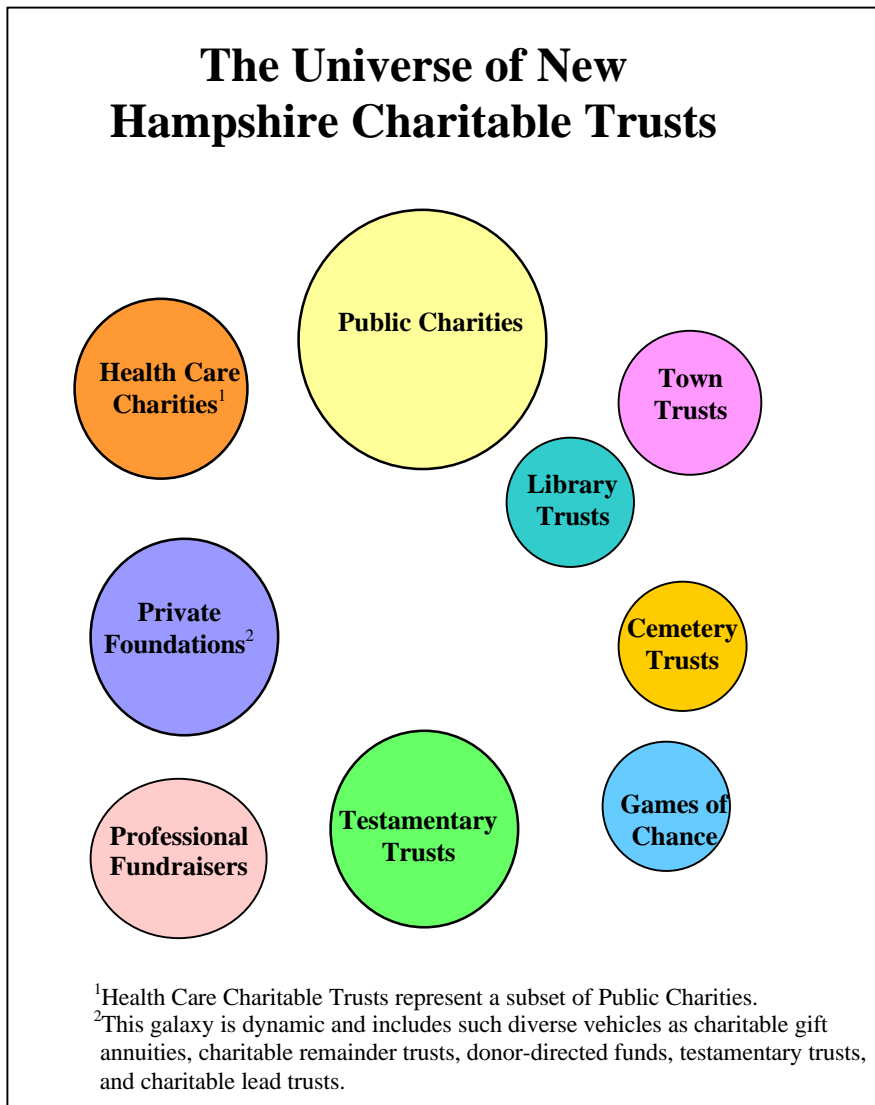
In a further effort to further standardize the treatment of victims on a statewide basis, the Victim/Witness Assistance Director works on behalf of the Attorney General on all legislative initiatives pertaining to victims' rights. As a certified instructor for the recruit academy of the New Hampshire Police Standards and Training Council, the Director is involved in the development of the current law enforcement training curricula for sexual assault, domestic violence and other victim issues in an effort to standardize the treatment of victims by law enforcement personnel.

D. CHARITABLE TRUSTS UNIT

The mission of the Charitable Trusts Unit is to protect the integrity of the charitable sector in the State of New Hampshire through effective registration, licensing, education, enforcement, and supervision while supporting the sector's growth and diversity.

The Charitable Trusts Unit serves as a central repository for the collection and dissemination of information concerning charitable nonprofit organizations, thereby allowing the general public, potential donors and others to access information and empowering them to make responsible decisions.

The Director of Charitable Trusts is responsible for the supervision, administration and enforcement of charitable trusts, charitable solicitations and charitable sales promotions in New Hampshire.



During the biennium, the Charitable Trusts Unit (the "Unit") dealt with a series of significant nonprofit healthcare matters, including (a) the creation of the \$87,000,000 Endowment for Health, (b) the implementation of the newly-enacted community benefits statute, (c) the merger of two of the State's largest community health centers, (d) the merger of two of the State's United Ways, and (e) the analysis of the financial structure of New Hampshire's nonprofit hospitals and community health centers (in cooperation with the Interagency Work Group).

Because the 1990's were a period of unprecedented growth in the charitable sector (both in the number of charities organized and the aggregate value of the assets held), the number of charities registering with the Unit increased substantially during this period. As of June 30, 2001, the total number of charitable trusts registered in New Hampshire was 5,149. During fiscal year 2000, approximately 437 new charitable entities were registered. During fiscal year 2001, approximately 402 new charitable entities were registered. The aggregate value of registered charities native to New Hampshire is conservatively estimated to be approximately \$8.2 billion dollars (religious organizations are excluded from this figure). During this same period, the resources of the Unit decreased, as its secretarial position was shifted to a different area in the Department. The Unit is now staffed with one attorney (the Director of Charitable Trusts), one registrar, a paralegal and an administrative assistant.

The Unit remains responsible for charitable trust matters filed in the State's ten Probate Courts dealing with a broad range of issues: from testamentary trusts to healthcare consolidations; from issues involving excessive fees to breaches of fiduciary duties; and for the statutory responsibilities more fully discussed below.

The Unit and the Director of Charitable Trusts (the "Director") continued their commitment to educating the charitable sector on major new issues. The Unit has engaged the public in a variety of ways:

- (1) articles in the New Hampshire Bar Journal on both community benefits and the growing problem of charitable fraud on the Internet;
- (2) state-wide public forums for those healthcare charitable trusts subject to the community benefits law;
- (3) educational forums for the trustees of cities and towns; and
- (4) forums, conferences and workshops for nonprofit organizations sponsored by the legal community and nonprofit groups.

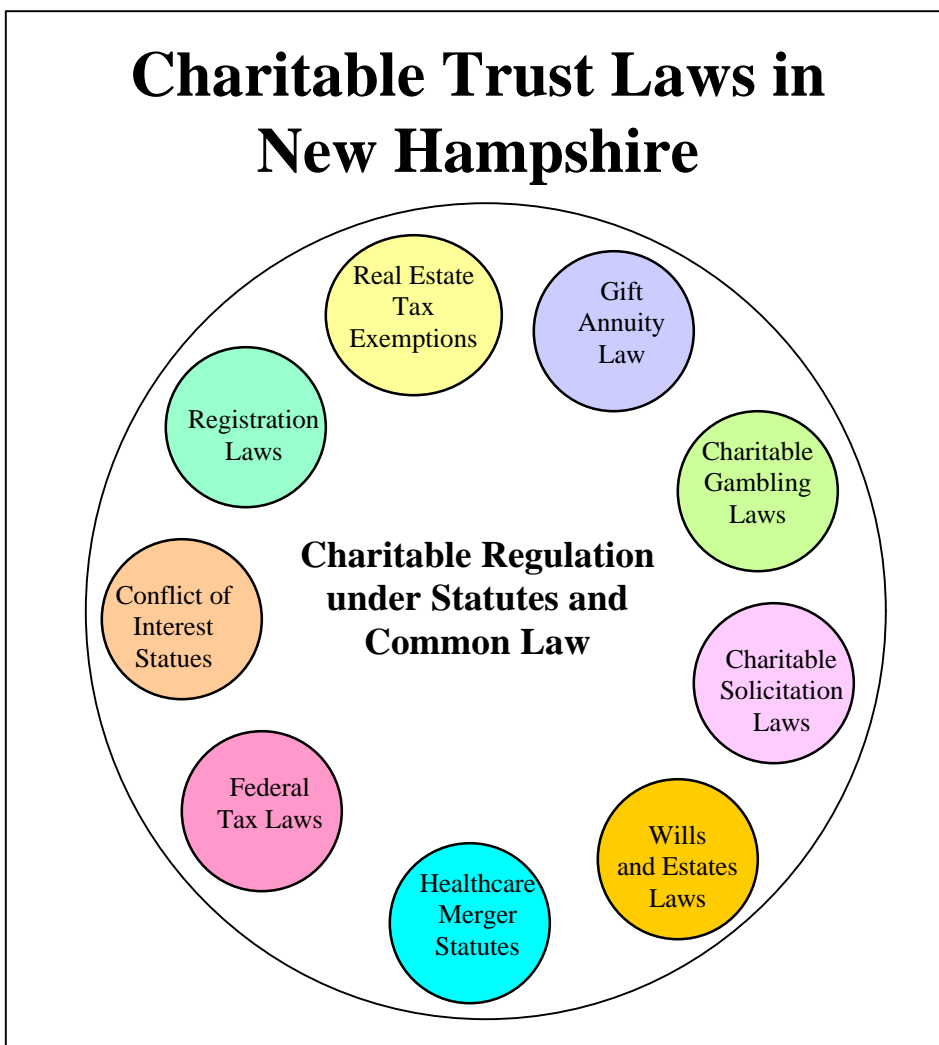
Complex and novel charitable trusts legal issues during the biennium included Optima Health's proposed merger of a nonprofit Catholic hospital with a nonprofit secular hospital.

Members of the Unit have met with the CEOs, governing boards and staff members of nonprofit entities, both large and small, to discuss the community benefits statute, fiduciary responsibilities, governance and other issues.

The Director is responsible for the supervision, administration and enforcement of charitable trusts, charitable solicitations, and charitable sales promotions. The Unit was the first such Unit ever established in the United States (1943), became a model for other state Attorneys General, and supervises charitable trusts and charitable solicitations through a registration and annual reporting system. Trustees of towns, libraries, and cemeteries file annual reports with the Unit for the charitable funds which they hold and administer. The Director is a necessary party to all judicial proceedings that affect the purposes of a charitable organization.

New Hampshire established the first Charitable Trusts Unit in the United States.

The laws governing charitable trusts in New Hampshire are complex and the following chart is a general schematic representation of some of the major laws:



The principal functions of the Unit include:

- Supervision, administration, and enforcement of charitable trusts in New Hampshire under the authority of RSA 7:19-32-b and the common law;
- Enforcement of the conflict of interest law (RSA 7:19-a);
- Licensing of professional fundraisers soliciting donations from New Hampshire citizens for charitable purposes (RSA 7:28);
- Enforcement of games of chance (RSA 287-D);
- Monitoring the issuance of charitable gift annuities (RSA 403-E);
- Appearing in Probate Court and Superior Court as a necessary party to all cases involving charitable trusts, including, but not limited to, petitions for *cy pres* and petitions for removal of trustees;
- Providing seminars for trustees of charitable trusts, attorneys, investment advisers, volunteers, officers, and members of governing boards of directors;
- Cooperating with the Sweepstakes Commission in enforcing the gaming laws relating to Bingo and Lucky 7's;
- Cooperating with the Criminal Bureau in investigating allegations of criminal activities by officers and directors of charitable trusts;
- Cooperating with the Department of Revenue Administration to enforce the laws regarding library trustees, cemetery trustees and trustees of trust funds;
- Cooperating with the Legislature in drafting legislation and testifying before Legislative committees;
- Producing an electronic *Directory of Charitable Funds in New Hampshire* for use by grant seekers and the general public.

The functions of the Unit include licensing of professional fundraisers.

Direct Public Access. One of the Unit's major goals is to facilitate direct, immediate public access to public documents in the Unit. As a first step in achieving this goal, the Unit has created an active

website where citizens can access and down-load statutes, filing forms, and information on filing procedures (www.state.nh.us/nhdoj/CHARITABLE/char.html). The website contains current information on a broad range of charitable issues, including guidance on charitable giving in the wake of the terrorist attacks in New York and Washington, D.C on September 11, 2001. The website also contains links to other state and federal agencies and to other informative sites.

Legislative Initiatives. During this biennium, the Unit implemented a comprehensive new law regulating healthcare charitable trusts and the community benefits they provide to the communities they serve (RSA 7:32-c). This law required the Unit to prepare forms and to serve as a repository for the community benefits plans prepared by the healthcare charitable trusts. During fiscal year 2001, 103 filings were received, containing a wealth of data on the healthcare needs of the citizens of New Hampshire. The Unit will offer additional workshops to educate smaller charities about compliance with the statutes.

New legislation regulates health care charitable trusts and the community benefits provided to the communities they serve.

Interagency Collaboration/Robert Wood Johnson Funding. The Director and the Unit cooperated with two other state agencies in securing a major Robert Wood Johnson Foundation grant for the State of New Hampshire in the healthcare area. The Unit has participated with the Department of Health and Human Services and the Department of Insurance in the Interagency Work Group on issues funded by the grant, including preparation of public sessions involving community benefits compliance and preparation of an inventory of charitable healthcare trusts operating in this State. The Robert Wood Johnson grant enabled the Interagency Work Group to retain experts, prepare reports, and engage both stakeholders and the broader public in a discourse on nonprofit health institutions. This Interagency Work Group is now in the third year of this collaborative effort.

Major Transactions

- (a) **Healthcare Consolidations.** The Unit devoted substantial resources during the biennium to the wave of consolidations and restructuring of nonprofit healthcare entities, including (1) the creation of a major new foundation from the sale of Blue Cross Blue Shield; (2) the final restructuring of Catholic Medical Center, balancing canon law and charitable trust law; (3) the proposed sale of the Gale Home in Manchester and the termination of the Centennial Home in Concord; (4) the consolidation of two of the State's 10 community health centers; and (5) the proposed merger of Lakes Region Hospital and Franklin Hospital. In preparing the new foundation (the Endowment for Health), the Unit organized

eight public hearings throughout the State, submitted draft documents for public comment, and organized a 2-day retreat for members of the new governing board to discuss fiduciary duties, investment policies, and other core issues. In the proposed merger of Franklin Hospital and Lakes Region Hospital, the Unit advised the parties as to regulatory issues, met with hospital incorporators, and participated in public forums in both Franklin and Laconia.

- (b) Other Transactions.** The Unit dealt with a variety of other issues in the 10 Probate Courts during the reporting period. A number of these cases involved novel or significant issues, including (1) the Gilmanton Trustees case (involving the accounting methods used to value trust assets from 1952-2000), (2) the Lindsay Trust case (involving trustee fees), (3) the Remick Trust case (involving conflicts of interest and proper use of charitable assets), (4) the Pack Monadnock case (involving the construction of a public safety tower), (5) the Chapman case (involving powers of attorney, the conveyance of charitable gifts, and public access to court proceedings), and (6) the City of Dover case (involving the use of charitable trust land for construction of a court facility or other purposes).

1. Civil Enforcement

The Unit has the power under RSA 7:24 and 7:25 to issue Notices to Attend Investigation whenever a question arises regarding the operation of a charity. During the biennium, the Unit issued 47 Notices and conducted 5 hearings, for reasons including failure to register or failure to report. The Unit referred 3 cases to the Criminal Bureau during the relevant period resulting thus far in one indictment.

The Unit's work includes enforcement of the charitable solicitation law. During fiscal year 2000, the Unit reviewed 287 solicitation notices and registered 139 professional fundraisers. During fiscal year 2001, the Unit reviewed 276 solicitation notices and registered 142 professional fundraisers. A petition to compel compliance was filed with the Merrimack County Superior Court during fiscal year 2000 against a paid solicitor and its bonding company for failure to file the joint financial report required by RSA 7:28. As a result, the Unit received \$10,000 in civil penalties.

2. Charitable Fundraising

The Unit prepared a statistical analysis of where charitable donations in New Hampshire went in 1996 and issued a comprehensive "Report on Charitable Fundraising in New Hampshire." That report was

Charitable Trusts initiated and completed investigations and enforcement activities in cases involving trustees and officers who improperly received loans and monies from their charities.

published in the New Hampshire Bar Journal and in newspapers throughout the State. The following material updates that earlier report. During fiscal year 2000, 255 reports were filed showing that paid solicitors collected a total of \$63,271,869, with \$26,605,380 being paid to the charities. In fiscal year 2001, 224 reports were filed, with paid solicitors collecting a total of \$147,092,348, with \$119,950,868 being paid to charity.

The Director and staff are concerned with the growth of charitable solicitation on the Internet, a practice that raises fundamental legal issues of regulation and compliance with the State's fundraising statutes. The Director is working with the National Association of Attorneys General/National Association of State Charity Officers to address and resolve these issues in a comprehensive manner. To alert attorneys and the general public, an article detailing Internet charitable fraud solicitation was published in the New Hampshire Bar Journal (December 2000) by the Director.

3. Public Outreach, Public Education and New Legislation

To achieve its goal of increased public awareness, the Unit has issued press releases, participated in television and radio interviews, and placed its *Directory of Charitable Funds in New Hampshire* on its webpage. The Unit has also prepared a report on the status of New Hampshire charities in the year 2001. The Unit's objective is to alert the public about fraudulent activity and educate the public about the need to give wisely. Although after the end of the biennium, it is important to note that the Unit issued press releases, conducted interviews and used its website to alert citizens about the need to give wisely within days of the terrorist attacks on September 11, 2001.

The Department of Justice has established a website, and the Unit has kept the information on its page current (www.state.nh.us/nhdoj/CHARITABLE/char.html). The *Directory of Charitable Funds in New Hampshire* is on that website and is updated every other month. The following publications are available from the web page:

- The Endowment For Health, Inc. (documents)
- Charitable Gift Annuities Guidebook
- Community Benefits Guidebook
- Games of Chance Guidebook

An update to Charitable Trusts' report on fundraising in New Hampshire for 2001 documented that 81% of funds solicited went to charities. The Unit's guidelines for charities and for donors in dealing with professional fundraisers are designed to encourage educated charitable giving.

- Guidebook for Directors and Officers of New Hampshire Charitable Trusts
- In the Name of Charity
- Trustees of Trust Funds Handbook
- The Optima Health Report

The Unit has also posted its forms used by charities and professional fundraisers in registering and reporting, and the forms necessary to comply with the requirements of RSA 287-D and RSA 403-E. There are links to the Secretary of State, the Internal Revenue Service, and to other sites of interest to the charitable sector. The Unit is participating in the national Electronic Filing Project and the Form 990 in 2000 initiative designed to improve the accountability of nonprofit organizations. The ultimate goal is to allow filings to be made electronically with the Unit and for the public to have access electronically.

4. Registration and Licensing

In fiscal year 2000, the Unit collected \$190,165 in registration and filing fees from charitable trusts and \$46,500 in filing fees from professional fundraisers. In fiscal year 2001, the Unit collected \$209,660 in registration and filing fees from charitable trusts, and \$41,575 in filing fees from professional fundraisers.

By the end of the reporting period, there were 4,581 charities and 568 testamentary trusts registered with the Unit. During fiscal year 2001, the Unit reviewed 2,875 annual reports filed by charities and 408 probate accounts filed by testamentary trusts. During this period, reports were received from the 243 towns and cities having custody of trust funds for the benefit of cemeteries, libraries, parks, and other public purposes. These reports were reviewed to ensure compliance with applicable statutes.

The Unit works with the Sweepstakes Commission to enforce the Bingo and Lucky 7 statutes. As part of its application review, Sweepstakes ensures the charities involved are registered with the Unit. This involves monthly reports from the Unit to Sweepstakes, and frequent telephone contact between the two state entities.

In 1998, RSA 287-D was amended to include the Attorney General in the process of issuing games of chance permits. During fiscal year 2000, the Unit reviewed 125 applications filed pursuant to RSA 287-D, and issued 94 letters of approval. During fiscal year 2001, the Unit

At the end of the biennium, there were 4,581 charities and 568 testamentary trusts registered with and reporting to the Charitable Trusts Unit.

reviewed 112 new applications and issued 95 letters of approval.

5. Litigation

The Director is a necessary party in any litigation involving charitable trusts. During fiscal year 2000, the Unit opened 97 cases. In fiscal year 2001, 65 new cases were opened. These cases range from extensive involvement by the Unit to monitoring the case for status and developments. They include reformation of trust instruments, removal of trustees, determination of beneficiaries, and investigations into allegations of wrongdoing by charities and their officers, directors and professional fundraisers, as well as the various cases mentioned earlier in this section of the report.

The Unit has collaborated, and continues to collaborate, with other state attorneys general in multi-state actions involving entities that engage in prohibited behavior across state borders. These multi-state actions allow for targeted use of limited resources.

6. Estates

Pursuant to both statute and court rule, the 10 Probate Courts send the Unit a copy of any will that mentions a charity or trust. These wills are reviewed and information is entered into the Unit's database. When the estate is closed and distributions are made to the charities, that information is also entered into the database, making it easier to retrieve financial information as well to satisfy requests from charities regarding their responsibilities in holding trust funds. In fiscal year 2001, the Unit processed 467 wills and recorded \$26,334,206 in bequests to charity. Prior to this data entry, information was kept on index cards. Staff is now entering the older information into the database.

*During the
biennium, the Unit
opened 162
litigation cases.*

E. OFFICE OF THE CHIEF MEDICAL EXAMINER

The Office of the Chief Medical Examiner has continued to evolve over the past biennium. Of particular note is the ongoing training of fifteen additional death investigators who will be installed as Assistant Deputy Medical Examiners by the Fall of 2001. These individuals will ease the problem of a dearth of available investigators in traditionally underserved areas in the northern and western regions of the State, and will also lend more consistency to death investigations in these areas. To that end, taking into account the particular training needs of medical examiners serving the more remote areas of the State, during the biennium the training curriculum was re-evaluated. We developed, and are now piloting, a new program which involves a combination of in-house training augmented by self-study programs on CD-ROM that were written and developed in-house.

The primary mission of the Office of the Chief Medical Examiner is the investigation of sudden, unexpected or violent death. By statute (RSA 611), there are twenty-five categories of death reportable to the medical examiner for inquiry. This inquiry includes an investigation into the circumstances of death and examination of the body, up to and perhaps including performance of an autopsy. Goals and objectives of this process include determination of cause and manner of death as well as proffering, when scientifically defensible, a hypothesis regarding specific aspects of the fatal episode. While aiding law enforcement in the investigation of violent death, over 50% of all medical examiner's cases are the result of natural causes, thus the Office of the Chief Medical Examiner serves a vital public health function in monitoring the overall health of citizens of the State. OCME also continues to serve as a consultant to various entities regarding wound pattern recognition and mechanisms of injury in non-fatally injured persons.

Case Work

Overall casework of the Office of the Chief Medical Examiner continues to increase each biennium. A total of more than 9,000 cases (a 33% increase over the prior biennium) required contact with a medical examiner at some level. Of these cases, approximately 6,000 required case review, filing of simple consultation reports and/or amended death certificates and 3,265 required in-depth investigation including a detailed scene investigation. Autopsy examination was performed on 665 cases, a figure only slightly greater than the previous biennium. Of note, however, is that commencing with the start of the previous biennium and continuing to date, there has been a continuous increase each half year during the biennium in the number of cases referred for autopsy. In the most recent

The Chief Medical Examiner's Office reviewed over 9,000 cases during the biennium, a 33% increase over the last biennium.

half year, we have seen the highest percentage increase yet, and that trend appears to be carrying over into the first half year of the new biennium. An ongoing concern is the increasing trend for County Attorneys to decline payment for autopsies ordered by the Chief or Deputy Chief Medical Examiner, but deemed of no fiscal responsibility for the County. The percentage of such cases has increased from 12% to 16% since the last biennial report.

Specimen Retention and Storage

From autopsied cases during the biennium, over 6,550 additional specimens of blood, tissue, vitreous and other biological samples were retained, bringing our total volume of samples in frozen storage to over 15,000 samples. With both our available frozen and non-frozen storage now at maximum capacity, we have implemented new policies for retention of specimens in long term storage. All non-homicide and other specimens which would have been saved for three years are now discarded after one year. Specimens of both frozen blood, body fluid and tissue samples and formalin-fixed gross tissue from homicides, SIDS deaths, and deaths of undetermined causes continue to be retained in long-term storage. Unless a specific written request has been made to preserve samples, specimens in all other cases are discarded after one year.

Toxicology and Histology

We continue to contract with National Medical Services (Willow Grove, PA) for the majority of the toxicologic analyses that are conducted on cases other than motor vehicle fatalities. The Public Health Laboratory continues to perform full toxicology screens including blood ethanol, carboxyhemoglobin, and a full drug screen on all motor vehicle related deaths. Additionally, the Public Health Laboratory currently performs toxicologic analysis of cases not brought in for autopsy, as well as comprehensive drug screens on approximately 600 cases submitted during the biennium where drug overdose was not suspected as a primary cause of death, yet recreational drug abuse was suspected and in many cases, confirmed. Staff shortages at this agency have led to unfortunate delays of up to 8 months for results, placing OCME in a difficult position with families, state and local agencies and law firms seeking finalized reports. A three-phase study looking at the possibility of submitting cases to the laboratory operated by the Department of Corrections, in order to reduce costs and turn-around time, did not yield acceptable results and National Medical Services remains the reference toxicology laboratory for OCME.

The Chief Medical Examiner provides training and consultation to county medical examiners, and trains medical professionals to recognize intentional injury.

Histological studies were conducted on approximately 725 cases (*more than double* that of the previous biennium), over 3,600 (up 35%) histologic slides were reviewed and a similar number of tissue blocks were added to permanent storage, further straining our limited storage capabilities.

Service to the State

During the biennium, the Office of the Chief Medical Examiner has provided the following services:

- Reviewed medical and police records connected to homicides and other crimes for the Attorney General's Office, County Attorneys and the Division for Children, Youth and Families (DCYF);
- Provided clinical assessment of injuries to victims of interpersonal violence at the request of DCYF, police, County Attorneys and Public Defenders;
- Provided training to clinicians and other health care providers on a broad range of issues in forensic medicine;
- Provided testimony at depositions and trials as needed;
- Consulted with prosecutors, law enforcement, forensic laboratory personnel, and hospital laboratories, private physicians, and hospital personnel as needed;
- Provided twenty-four hour a day coverage for consultations with county medical examiners;
- Maintained and updated procedures and protocols for disaster management and preparedness, participated in disaster training exercises, including the federal TOPOFF exercise in Portsmouth, both tabletop exercises and an actual drill at Pease Tradeport, and both tabletop exercises and an actual drill at Manchester Airport;
- Selected and trained two senior members of the field staff in emergency operations and mass fatality incident management to be able to provide 24-hour scene management in a potential mass fatality incident;
- Participated in the development of protocols for and training of a statewide forensic dental identification team;

The Chief and Deputy Chief Medical Examiner provide clinical forensic evaluations and expert testimony in cases of non-fatal injuries.

- Participated in mass fatality training programs both locally, in a two-day statewide program co-sponsored with the NH Office of Emergency Management, and on the national level at a Region 1 DMORT drill;
- Developed procedures and protocols for management of fatalities involving hazardous materials and weapons of mass destruction, with the Chief Forensic Investigator being formally certified in HazMat response and as a HazMat and WMD training specialist;
- Provided toxicology reports for all fatal motor vehicle accidents to the Division of Enforcement (Department of Safety);
- Provided data and complete reports on all drug, poison and alcohol related deaths to the New Hampshire Poison Information Center, New Hampshire Alcohol and Drug Abuse Prevention Program, the National Pediatric Toxicology Registry, and the federal Drug Abuse Warning Network;
- Completed U.S. Department of Labor Reports on all work-related fatalities;
- Completed reports for the U.S. Consumer Product Safety Commission on all deaths involving commercial products and residential buildings (including falls) and continued to participate in the MECAP Project;
- Provided other data and reports on all appropriate cases to the Federal Food and Drug Administration, Drug Enforcement Agency, Office of the Ombudsman, Federal Aviation Administration, National Highway Transportation Safety Administration, National Transportation Safety Board, and Occupational Safety and Health Administration.
- Presented a regular schedule of lectures and otherwise participated in medical resident and student training at Dartmouth Medical School, Department of Pathology.
- Presented a regular schedule of lectures and otherwise participated in physician assistant training at Notre Dame College, Manchester;

The Chief and Deputy Chief Medical Examiners participate in the training of residents and students at the Pathology Department of Dartmouth Medical School.

- Conducted training programs for law enforcement, fire service and other safety responders, pre-hospital (EMT/Paramedic) personnel, medical and nursing staff, attorneys, high school and college level students, victims' assistance volunteers, and medical examiners across the State;
- Participated in multiple state committees, task forces and conference groups including the Child Fatality Review Committee, the Domestic Violence Fatality Review Committee, Youth Suicide Prevention and Awareness Committee, Trauma Review Committee, Teen Motor Vehicle Legislative Task Force, NH Coalition to Prevent Shaken Baby Syndrome, Vital Records Improvement Fund Advisory Committee, Child Abuse and Neglect Committee of the NH Pediatric Society, the Attorney General's Task Force on Child Abuse and Neglect, the NH Injury Data Work Group, and NH Crash Outcome Data Evaluation Systems Governing Board.
- Participated in multiple state, national and international professional organizations including the National Association of Medical Examiners, American Academy of Forensic Sciences, New England Division of the International Association for Identification, British Fingerprint Society, International Homicide Association, American Academy of Pediatrics, College of American Pathologists, American Professional Society on the Abuse of Children;
- Submitted, presented and/or published scientific papers in professional forums and scientific journals;
- Developed an ongoing Quality Assessment program to review critical performance elements of forensic death investigation and to identify and resolve problems and issues which arise in the course of professional practice;
- Established a closed internet web site and *listserve* service for deputy and assistant deputy medical examiners as an educational and communication tool;
- Provided full-time, around the clock coverage by trained assistant deputy medical examiners to eight of ten counties and coordinated monthly call schedules and coverage in

The Chief and Deputy Chief Medical Examiner conduct ongoing training of law enforcement and medical personnel statewide.

those counties (Cheshire and Coos Counties are currently
staffed by local physicians acting as Deputy Medical
Examiners and fashion their own call schedule.)

II. DIVISION OF LEGAL COUNSEL

The Civil Bureau and the Transportation and Construction Bureau comprise the Division of Legal Counsel. The Civil Bureau provides legal advice and legal representation to over 100 executive branch agencies, boards and commissions. The Transportation and Construction Bureau acts as general legal counsel for the New Hampshire Department of Transportation. The bureau provides legal advice and representation to the Department in eminent domain, real estate, contract and other civil matters in state trial courts. The Bureaus of the Division of Legal Counsel act as attorney for the State in civil cases in the New Hampshire Supreme Court where the State has an interest.

A. Civil Law Bureau

The Civil Law Bureau provides legal advice and representation to over 100 executive branch agencies, commissions and professional licensing and regulatory boards. Civil Bureau attorneys represent these entities and their employees in state and federal trial and appellate courts and before administrative tribunals. Bureau attorneys also provide legal advice and opinions to agencies and assist them in interpreting their statutory authority and obligations. Executive branch agencies submit contracts and leases to the Bureau for review prior to submission to Governor and Council to ensure conformity with the law. During the biennium, attorneys in the Civil Bureau reviewed more than two thousand nine hundred (2900) contracts, opened five hundred fifty (550) legal advice files, worked on seven hundred thirteen (713) litigation cases and filed eighty-one (81) briefs in appellate courts. The Bureau was staffed by 10-12 attorneys, two paralegals and 3-5 secretaries during this time period.

In October of 1999, the Federal Litigation Unit (FLU) began operation within the Civil Bureau. It consists of a Senior Assistant Attorney General who manages the Bureau, three attorneys within the Civil Bureau, a paralegal and a secretary. The purpose of the unit is to handle all civil litigation against the State in the United States District Court for the District of New Hampshire and the First Circuit Court of Appeals. Over the course of the last two years, the Unit has handled cases dealing with sexual harassment, federal campaign finance reform, claims pursuant to the Americans with Disabilities Act, writs of habeas corpus, and numerous cases involving federal claims brought by New Hampshire State Prison inmates. The Unit is also currently involved in several class action cases involving the Department of Health and Human Services. The Unit has developed an expertise in federal court procedure and the specialization developed by members of this Unit has

Civil Bureau attorneys handled 713 litigation cases, filed 87 appellate briefs and reviewed 2900 contracts during the biennium.

improved the office's relationship with the federal court and has led to positive feedback from the judges who sit in that court. The federal court has designated the office to have a permanent membership on the Federal Court Advisory Committee. Consequently the office has significant input concerning the procedures in the federal court.

Litigation

Civil cases filed in state and federal courts challenging state statutes and alleging wrongdoing by state entities and employees continue to require a significant portion of Civil Bureau attorney time. During the biennium, civil attorneys worked on seven hundred thirteen (713) litigation cases. Three hundred thirty-four (334) new litigation cases were opened and bureau attorneys worked on an additional three hundred seventy-nine (379) litigation cases that remained open from prior years. Over 400 cases were resolved either by court action or settlement.

Over 400 cases were resolved during the biennium either by court action or settlement.

Trial Court Litigation

Civil Bureau attorneys represented the Department of Health and Human Services in several complex class action lawsuits filed in federal and state courts. Those cases included system wide challenges to the State's Medicaid system. Two lawsuits were brought by the New Hampshire Health Care Association that challenged the legality of the State's Medicaid reimbursement system for nursing facilities. Both lawsuits were dismissed.

The Civil Bureau also represented the Department of Health and Human Services in a class action challenge to the State's administration of the Medicaid home and community based care waiver program for persons with acquired brain disorders. This case, entitled *Bonnie Bryson, et al. v. Donald Shumway, et al.*, was brought by individuals with brain injuries or brain disorders who claim a right to receive State funded personal and residential care in home or community based settings. The lawsuit remains ongoing with trial anticipated in December 2001.

Another case, *Hawkins v. Commissioner of Department of Health & Human Services*, was filed in federal district court as a proposed class action. The Plaintiffs allege that the Department has violated their rights under the Medicaid Act and the United States Constitution by failing to provide adequate Medicaid dental benefits to persons under twenty-one (21) who are eligible for Medicaid. Plaintiffs' efforts to certify the proposed class have been defeated thus far. In June 2001, the parties agreed to meet and discuss settlement possibilities. By mutual agreement, the federal district court litigation has been stayed through

January 2, 2002. The Plaintiffs in *Hawkins* also filed a related lawsuit in Superior Court pursuant to the Right-to-Know Law. They argued that individual pieces of computer data, in and of themselves, are “public records subject to disclosure.” They also argued that agencies can be compelled to create new documents pursuant to RSA 91-A. Civil attorneys objected to that interpretation of the Right-to-Know Law and the Superior Court ruled in favor of the State. The Plaintiffs have appealed and the case is now awaiting decision in the New Hampshire Supreme Court.

As in years past, prison litigation continues to demand significant time from the civil attorneys. The opening of the Berlin prison and the expansion of the Lakes Region Facility means that civil attorneys must travel to Coos and Belknap counties to handle litigation involving the Department of Corrections. To more efficiently address the increase in prison litigation, the Department of Corrections agreed to transfer and fund a full time attorney position in the Civil Bureau. This attorney, with assistance from other members of the Civil Bureau, handles all prison litigation. The result is a high level of expertise in this area of law which results in consistency and efficiency.

Over the past year the Bureau was able to bring *Laaman v. Warden, N.H. State Prison*, a conditions-of-confinement class-action case filed in 1975, to conclusion. After successfully narrowing the disputed issues and having defended against an appeal to the First Circuit Court of Appeals, the case was settled out of court. The result is that for the first time in over 25 years, New Hampshire’s largest prison is no longer under the jurisdiction of the federal district court.

The Bureau also successfully defended the constitutionality of two state statutes. In *Starr v. Governor, et al.* a group of inmates challenged the constitutionality of a newly passed law charging a 5% surcharge on items sold at the prison canteen. The revenue generated from that law benefits the victims of crime and the general fund.

In *Fischer v. Governor*, an incarcerated felon challenged the constitutionality of the felon disenfranchisement statutes, RSA 607-A:2 (1986) and RSA 654:5 (1996). Civil attorneys defended that statute and the Supreme Court held that the Legislature has constitutional authority under Part I, Article 11 to determine voter qualifications and that the Legislature reasonably excluded incarcerated felons from voting.

During the biennium, civil attorneys successfully defended seventy-five (75) petitions for writ of habeas corpus filed by inmates at the New Hampshire State Prison.

Laaman v. Warden, N.H. State Prison, a conditions of confinement class action case filed in 1975, was concluded during the biennium, ending over 25 years of federal district court jurisdiction over the state prison.

School Funding Litigation

Civil attorneys have devoted significant time to litigation and legislation involving school funding and the statewide system for providing an adequate education to New Hampshire's students.

In response to the Supreme Court's 1997 *Claremont* ruling that the State's system of financing elementary and secondary public education primarily through local property taxes was unconstitutional, members of the Civil Bureau worked with the Legislature and the Governor in responding to the mandates of the *Claremont II* decision.

In April 1999, the Legislature enacted Chapter 17 of the Laws of 1999 ("Chapter 17"). This law established a formula for determining the per pupil adequate education cost for each biennium and each municipality's annual adequate education cost. In August 1999, Civil Bureau attorneys defended that law when *Claremont* plaintiffs challenged the constitutionality of Chapter 17, including a five-year phase-in of the Uniform Education Property Tax in "donor" communities. In October 1999, the Supreme Court held that the phase-in of the Uniform Education Property Tax was unconstitutional and that because the phase-in was not severable from the Uniform Education Property Tax, the Uniform Education Property Tax itself was unconstitutional. The Court did not invalidate any other provisions of Chapter 17. In November 1999, the Legislature enacted Chapter 338 of the Laws of 1999 ("Chapter 338"). This law reenacted the Uniform Education Property Tax established under Chapter 17 but did not contain a phase-in provision.

In December 1999, residents of three "donor" communities filed a lawsuit, *Sirrell v. Department of Revenue Administration*, alleging that the Uniform Education Property Tax reenacted by Chapter 338 was not proportional and reasonable as required by the New Hampshire Constitution. The petitioners challenged the constitutionality of the Uniform Education Property Tax on its face under Part II, Article 6, of the New Hampshire Constitution, and as applied under Part II, Article 5.

Civil Bureau attorneys defended the State and the case went to trial for six days beginning on October 16, 2000. The Superior Court ruled that the Uniform Education Property Tax, as applied by the State, was unconstitutional, violating Part II, Articles 5 and 6, of the New Hampshire Constitution. The Court also ruled that the State's assessment and equalization procedures did not meet constitutional standards. The court ordered that the State reimburse the tax dollars paid and collected since the enactment of the Uniform Education Property Tax.

Civil attorneys devoted significant time to litigation and legislation involving school funding.

The State requested and the New Hampshire Supreme Court granted the State's request for an expedited appeal of the matter. On May 3, 2001, the Supreme Court overturned the Superior Court decision including the order for reimbursement and found that the petitioners had not proven that the property tax system was unconstitutional. The Supreme Court also held that the State must institute a system, by 2003, to ensure that all local property assessments are brought to full value at least once every five years pursuant to Part II, Article 6, of the New Hampshire Constitution.

In the last "education funding" lawsuit filed during the biennium, communities and taxpayers who are members of a cooperative school district challenged the constitutionality of the Uniform Education Property Tax and the educational funding distribution system (*New London v. State*). The petitioners are "donor" communities under the Uniform Education Property Tax. They allege that they are subject to double taxation as they are "donor" communities under the Uniform Education Property Tax and as members of a cooperative school district with proportionally higher property values than the other member communities of their cooperative school district. This case is scheduled for trial in late 2001.

Other significant civil litigation matters include *GTECH Corporation v. Sweepstakes Commission*, a case where a former lottery terminal vendor challenged the award of the contract to a new vendor. After the State filed several defensive pleadings attacking the legal basis for the case, the Plaintiffs withdrew the lawsuit. In *Laro v. New Hampshire Retirement System*, a former employee of the New Hampshire Retirement System sued the State in federal district court alleging that the System violated the Family and Medical Leave Act of 1993 ("FMLA") when it terminated his employment while he was on medical leave. A motion to dismiss was filed on the basis that the Eleventh Amendment to the United States Constitution prohibits suits under the FMLA against the State in federal court. The district court granted the motion to dismiss. The Plaintiff appealed the dismissal to the First Circuit Court of Appeals. The First Circuit affirmed the district court's dismissal of the lawsuit holding that the Eleventh Amendment barred Plaintiff from suing the State in federal court under the FMLA.

The State's implementation of its plan to design and construct a new statewide public safety radio system for use by state, local and federal agencies generated a series of lawsuits which have been to date, successfully defended by Civil Bureau attorneys. For example, two challenges were raised to the State's authority to permit new radio antenna towers on Mount Kearsarge. The first was *Nevins v. N.H. Department of Resources and Economic Development*. The Merrimack

The State's implementation of a new statewide public safety radio system has been successfully defended to date by Civil Bureau attorneys.

County Superior Court decided in favor of the State on January 11, 2000. An appeal is pending before the Supreme Court.

The second Mount Kearsarge case was *Society for the Protection of New Hampshire Forests v. N.H. Department of Resources and Economic Development*. Summary judgment was granted in favor of the State on May 10, 2000. No appeal was taken.

In *Conservation Law Foundation v. State of New Hampshire*, the Plaintiff challenged DRED's issuance of a Pack Monadnock use permit on the grounds that the State lacked title to the summit property where the tower was located, or, alternatively, that the use permit violated the terms of a charitable trust requiring the summit to be used as a public park. Because of the allegations that an express trust was involved, the case was transferred to Hillsborough County Probate Court, where it was designated as *In re: Pack Monadnock Miller State Park*. Following a three (3) day trial, the Probate Court ruled in favor of the State on April 23, 2000. An appeal is pending before the New Hampshire Supreme Court.

Civil Bureau attorneys continue to defend the State's financial interests in *Smith v. N.H. Department of Revenue*. This case, a class action filed in 1995, challenged the constitutionality of the New Hampshire statute which exempted interest and dividends generated by New Hampshire banks from the tax imposed by former RSA 77:4. In 1996 the New Hampshire Supreme Court held that this exemption discriminated against interstate commerce in violation of Article I, § 9, cl. 3 of the United States Constitution. The matter was remanded to the trial court to provide the Plaintiffs an opportunity to prove whether they might be entitled to a refund of interest and dividends taxes paid by them between 1991 and 1994. A six-day trial was held beginning on May 22, 2000. On August 15, 2000, the Superior Court concluded that the Plaintiffs met their burden of proof only as to out-of-state banks, and awarded them a tax refund of "all interest and dividends taxes paid for the years 1991-1994 on interest on any deposits or other investment products in out-of-state banks; and dividends from stock in out-of-state banks." The Plaintiffs appealed, claiming that a much broader range of financial entities were negatively affected by the discrimination. The State cross appealed on the issue of whether the Plaintiffs should receive any tax refund because they, as taxpayers, did not prove that they were injured by any reduction in the value of non-bank "financial commodities" in New Hampshire. The Supreme Court accepted both appeals, and the case is pending. A decision is not expected before mid-2002.

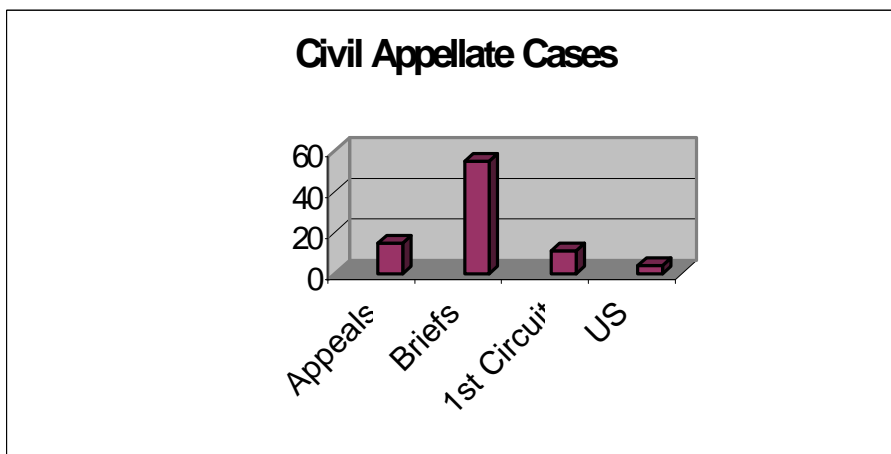
During the biennium, the State Employees Association and the New Hampshire Troopers Association were active in filing unfair labor

Civil Bureau attorneys are defending the State's financial interests in Smith v. N.H. Department of Revenue.

practice complaints with the Public Employee Labor Relations Board (“PELRB”). These complaints typically involved assertions that the State had deviated from a “past practice” not covered by the State’s collective bargaining agreement by instructing an agency or official not to follow a practice that was prohibited by statute or rule. In *Appeal of N.H. Department of Transportation*, the New Hampshire Supreme Court found in favor of the State and ruled that the DOT was not required to continue distributing tollbooth passes in contravention of statute. In *Appeal of N.H. Troopers Association*, the court ruled that the state police were entitled to eliminate the rank of “corporal” as part of a reorganization that did not affect employee salary or duties.

Appellate Litigation

The Civil Bureau has an active appellate practice. Under RSA 7:6 the Attorney General must act as attorney for the State in all civil cases in the Supreme Court where the State has an interest. During the biennium, Civil Bureau attorneys filed a total of seventy (70) briefs in the New Hampshire Supreme Court. Fifty-five (55) briefs were in defense of State action and fifteen (15) were State appeals. In the federal court system, civil attorneys filed eleven (11) briefs in the First Circuit Court of Appeals and submitted four (4) filings in the United States Supreme Court.



NH/Maine Boundary Dispute

Pursuant to Chapter 264:1, Laws of 1994, the Attorney General was directed to pursue settlement of the boundary line issue between Maine and New Hampshire consistent with five findings expressly stated in Chapter 264:1. Those findings include a determination that “jurisdiction and control over the whole of the Piscataqua River, is and

The NH/Maine boundary dispute was brought to a legal conclusion during the biennium.

always has been entirely within the county of Rockingham and this state” and “complete domain and ownership of the tidal waters and submerged lands of the whole of the Piscataqua River, and including its Portsmouth Harbor, are solely vested in the sovereign people of the State of New Hampshire” Over the years, discussions between New Hampshire and Maine occurred but did not result in settlement. Accordingly, on March 6, 2000, this Office filed a Motion For Leave To File Complaint with the United States Supreme Court, and on June 29, 2000, the United States Supreme Court granted the motion and provided the State of Maine with an opportunity to file a Motion To Dismiss on the ground of res judicata. On August 25, 2000, Maine filed its Motion To Dismiss, arguing that New Hampshire’s complaint should be barred by the legal doctrines of issue preclusion, claims preclusion, and judicial estoppel. On October 10, 2000, this Office filed a brief in opposition to Maine’s Motion To Dismiss, detailing why none of those legal doctrines bar New Hampshire from proceeding to a trial on the merits at which we could present the vast amount of historical evidence showing that jurisdiction over the entirety of Portsmouth Harbor lies in New Hampshire. On December 19, 2000, the United States Solicitor General submitted a brief on behalf of the United States as amicus curiae, in support of Maine’s Motion To Dismiss, urging the Court to dismiss the complaint based upon the legal doctrine of issue preclusion. On January 3, 2001, we filed our brief in response to the United States brief, pointing out why the doctrine of issue preclusion does not apply to this case.

Oral argument was held before the United States Supreme Court on April 26, 2001, and on May 29, 2001 the United States Supreme Court issued a unanimous opinion, (Justice Souter not participating), dismissing our complaint concerning the New Hampshire/Maine boundary line. *New Hampshire v. Maine*, 532 U.S. ____ (No. 130 Orig., May 29, 2001). The Court held that the legal doctrine of judicial estoppel applied to prevent New Hampshire from asserting any definition for the inland Portsmouth Harbor and Piscataqua River boundary line other than that which was agreed upon to resolve the 1971-1977 boundary line dispute with Maine concerning the seaward boundary from Portsmouth Harbor to the Isles of Shoals. That definition, to which the United States Supreme Court has now held we are bound not only seaward to the Isles of Shoals but inland through the Portsmouth Harbor and up the Piscataqua River as well, is as follows: From the mouth of the Portsmouth Harbor through the harbor and up the Piscataqua River, the middle of the river, middle of the river meaning the middle of the main channel of navigation. Having reached this conclusion, the United States Supreme Court dismissed the complaint. This Office filed a Petition For Rehearing in the United States Supreme Court on June 25, 2001. On August 6, 2001, the Supreme Court, without comment, denied the Motion To Reconsider. Its decision constitutes the resolution of this matter.

Legal Advice and Assistance

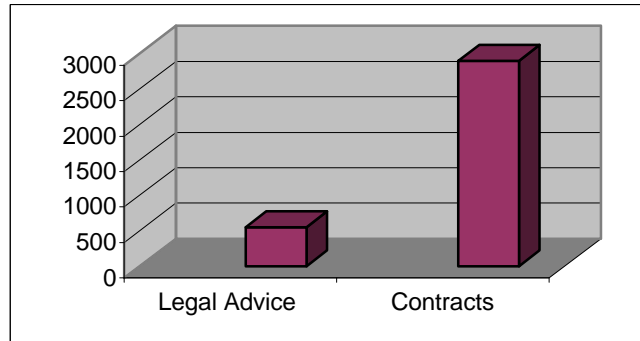
Civil Bureau attorneys assist State agencies, boards and commissions with legal issues on a daily basis through telephone consultation, e-mail, informal legal memoranda and formal written opinions. During the biennium Civil Bureau attorneys opened approximately five hundred fifty (550) legal advice files. Some of these matters required extensive efforts and time commitment by individual attorneys and Civil Bureau staff. For example, substantial resources were expended in advancing electric utility restructuring. The restructuring settlement agreements that Civil Bureau attorneys helped to negotiate during the last biennium with Public Service Company of New Hampshire and the New Hampshire Electric Cooperative were approved by the General Court and the Public Utilities Commission (PUC) during the biennium. Civil attorneys also appeared before the PUC in the restructuring proceedings which extended for thirty-three (33) hearing days spanning the first year of the biennium, assisted with legislative restructuring initiatives and defended the PUC's approval of the Settlement Agreement before the New Hampshire Supreme Court and the United States Supreme Court. For much of the biennium, efforts were made to resolve restructuring issues pertaining to Connecticut Valley Electric Company via litigation at the Federal Energy Regulatory Commission and via settlement discussions that have continued into the current biennium. Civil Bureau attorneys participated in numerous other PUC proceedings, including the proposed merger of PSNH with Consolidated Edison, a proposed UNITIL Electric Company restructuring agreement, the merger of Granite State Electric Company's parent corporation with the National Grid, a PSNH tariff docket and various energy efficiency and low-income program proceedings.

The Civil Bureau also assisted the Governor's Office of Energy and Community Services and the State Treasurer's Office in enabling cost effective energy efficiency programs for state buildings by helping in the development of a Master Lease Agreement to fund the projects, proposing enhancing amendments to RSA 21-I:19(a-e) and supporting the development of a standardized Request for Proposals and contract format.

Attorneys in the Civil Bureau aided the Commissioner of Insurance in the liquidation of Tufts Health Plan of New England, Inc. Between December 1999 and July 2001, the Liquidator paid approximately \$30 million in settlements to claimants. Detailed information and regular progress reports regarding the liquidation process are available at the Insurance Department website www.state.nh.us/insurance.

Substantial resources were expended by Civil Bureau attorneys on advancing electric utility restructuring in the courts, the Legislature and before the PUC.

During the biennium, Civil Bureau attorneys reviewed and approved more than two thousand nine hundred (2,900) contracts for executive branch agencies and assisted agency representatives with contract related questions.



In an extensive effort to provide legal assistance to the staff and members of professional licensing and regulatory boards, attorneys and investigators in the Civil Bureau and the Administrative Prosecution Unit of the Consumer Protection Bureau joined together to conduct a four-part series of comprehensive training seminars. Some of the many topics addressed in the training series included the Right-to-Know Law, the Administrative Procedures Act, the separation of prosecutorial and adjudicative functions of administrative agencies, the constitutional requirements of due process and the nuts and bolts of the administrative hearing process. The training also included a full day seminar on conducting investigations. Given the positive response to this training series, the Department of Justice anticipates developing future multi-disciplinary training opportunities within the Department and in cooperation with attorneys and staff in other executive branch agencies.

Civil Bureau attorneys presented a 4-part series of comprehensive training seminars for staff and members of professional licensing and regulatory boards.

B. TRANSPORTATION LAW BUREAU

The Transportation Law Bureau (Bureau) acts as legal counsel for the New Hampshire Department of Transportation (Department). The Bureau represents the agency in eminent domain, real estate, contract, construction, personnel and personal injury cases related to the State's highway and transportation systems and to the State's other public facilities. The Bureau provides the Department of Transportation with general legal advice in a broad range of transactions, represents the Department in administrative proceedings and in litigation in the Superior and Supreme Courts. The workload generated by the breadth of the Department of Transportation's responsibilities resulted in 411 new files being opened by the Bureau during the two year period. Including files that remained open from the previous biennium, over 525 matters were resolved in that period.

During the biennium, the Bureau's five attorneys, a paralegal and two secretaries successfully concluded a vast number of significant land acquisitions for the State. Prior to condemnation, the Bureau routinely advises the Department on land title issues, document preparation and legal issues affecting the proper valuation for the acquisition of property necessary for the construction of transportation improvements. After the initiation of eminent domain proceedings, the Bureau represents the State during the litigation in reaching a fair and equitable resolution for the takings. The Bureau negotiated or litigated to conclusion 101 eminent domain cases arising out of land takings for a number of major transportation projects. An additional 112 cases were opened in the biennium. The acquisitions involved are an essential step in completing the projects necessary to improve the safety and efficiency of the State's transportation network. Among the many projects with which the Bureau was involved included the final stages of the Route 101 Expansion and reconstruction in the Towns of Brentwood, Epping, Exeter, Raymond and Hampton; several major improvements to the F.E. Everett Turnpike in Nashua; the middle and later stages of the Hillsborough Bypass Project; and, the Conway Bypass Project, including the construction of the North/South Local Road. In addition, other smaller projects required the Bureau's involvement as well, such as reconstruction of Routes 4 and 9 in the Town of Northwood, improvements to Route 1 in Seabrook and Portsmouth, reconstruction of Exit 20 in the Town of Tilton and Routes 108 and 85 in Stratham.

Tort claims handled by the Bureau encompass claims of death, personal injury and property damage alleged to have been caused by negligent design, construction or maintenance of the State's transportation system. Defending claims brought against the State in this

*The
Transportation
Law Bureau acts
as legal counsel
for the
Department of
Transportation
and represents
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eminent domain,
real estate,
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personal injury
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the State's
highway and
transportation
systems and
other public
facilities.*

area has continued to be a major area of practice for the Bureau. During the biennium, the Bureau resolved 70 tort cases brought against the Department of Transportation. A total of \$18,730.97 has been awarded against the Department and settlements totaling \$234,770.00 have been paid out during the two year period. The resulting sum of \$253,500.97 represents only a slight increase when compared to the totals of the previous two bienniums. This increase is not considered statistically important and is primarily related to a single incident on the Memorial Bridge in Portsmouth.

In the tort area, the biennium brought the issuance of an important Supreme Court opinion in *Bowden v. O'Leary, et al.* The Supreme Court upheld the State's statutory protections, set forth in RSA 230:78-82. The Court's support for these statutes was essential to the State's ability to control future costs related to personal injuries on the State's transportation network. Had the statutes not been upheld, the State would have seen dramatic increases in the costs of defending personal injury claims.

Also of significance was the Supreme Court's order in *Town of Nelson v. Kenison*, which upheld the Commissioner's ability to reclassify roads to local control. The Court concluded such reclassifications did not constitute an unfunded mandate in contravention of the New Hampshire Constitution.

Over the biennium, a major area of the Bureau's practice increasingly focused on environmental challenges to proposed improvements by the Department of Transportation. A variety of groups have filed suits challenging approvals for proposed projects such as the Troy Bypass, the Keene Bypass and the Manchester Airport Access Road. To date, the Bureau has been successful in defeating each challenge. Each of the projects, however, faces additional legal hurdles in the future. In particular, it is anticipated that the proposed Manchester Airport Access Road will lead to federal litigation under the National Environmental Policy Act and the Clean Water Act due to the location of eagles near the proposed corridor.

Litigation over airport and railroad issues also occupied much of the Bureau's time during the last biennium. Two separate cases now pending before the New Hampshire Supreme Court involve interpretations of the statutes which permit the State to preserve railroad corridors for future use. The cases will both define the rights the State acquires when it purchases railroad rights-of-way as well as the uses to which abandoned corridors may be utilized either by private parties or the public. A major airport case, involving federal litigation as well as a state suit, was successfully resolved regarding Dillant-Hopkins Airport in

Tort cases defended by the Bureau encompass claims of death, personal injury and property damage alleged to have been caused by negligent design, construction or maintenance of the State Highway System.

The Transportation Bureau advises the Department of Transportation in matters related to railroads, aeronautics and public transportation law.

Keene. The State was able to persuade the state superior court to reverse an earlier decision involving a dispute between the City of Keene, which operates the airport, and the Town of Swanzey, where the airport is located. In the end, the two municipalities entered into a consent decree delineating their responsibilities and reducing the potential for future conflicts between them.

Much of the Bureau's focus in recent years has been on improving work processes to proactively control work flow. Because of the nature of the Department of Transportation's work, the Bureau reviews and approves hundreds of contracts on an annual basis in addition to the caseload referenced earlier. By streamlining the process and improving the consistency of contract reviews, the Bureau has reduced the turnaround time for contracts from weeks to a matter of days or hours in most instances. The Bureau also has focused on taking a more proactive approach to assisting the Department of Transportation in handling personnel issues. This has greatly reduced the Department's exposure to lawsuits brought by its employees and improved the Department's success rate in disciplinary cases. Nonetheless, human resources issues remain a significant source of growth in the Bureau's workload.

III. DIVISION OF PUBLIC PROTECTION

The Criminal Justice Bureau, the Homicide Bureau, the Consumer Protection and Antitrust Bureau, and the Environmental Protection Bureau comprise the Division of Public Protection. The Bureaus of the Division of Public Protection, along with the Charitable Trusts Unit, enforce the State's criminal, environmental protection, consumer protection, and charitable laws, administer numerous programs to protect consumers and control business combinations, advise and provide legal representation to state environmental agencies and commissions, represent the State in all criminal appeals to the New Hampshire Supreme Court, conduct a broad range of public and law enforcement educational programs, and investigate and resolve individual consumer complaints.

A. CRIMINAL JUSTICE BUREAU

The Criminal Justice Bureau prosecutes major criminal cases throughout New Hampshire and handles the appeals of all criminal cases tried in New Hampshire courts. The Bureau prosecutes homicides, major economic crimes, crimes committed by public officials, Medicaid fraud, patient abuse and neglect, insurance fraud, and major drug trafficking cases. The Bureau also represents the State in all forfeiture actions involving property used in or obtained through illegal drug trafficking. In addition to prosecuting criminal cases, Criminal Justice Bureau attorneys routinely appear before the New Hampshire Supreme Court and various federal courts to represent the State in criminal cases in which an appeal or a petition for habeas corpus relief is filed. The Criminal Justice Bureau also provides legal instruction at New Hampshire's police academy and presents continuing legal education seminars for prosecutors throughout the State.

At full staffing, the Criminal Bureau consists of twenty attorneys, five investigators, three financial analysts, two paralegals, and seven secretaries. For significant portions of the biennium, however, the Bureau was not fully staffed due to mandatory budget cuts. The attorneys generally specialize in a particular type of prosecution, such as homicide, Medicaid fraud, drug prosecutions, insurance fraud, and appeals, although newer attorneys are assigned a more generalized caseload. Criminal Justice Bureau investigators and financial analysts investigate most of the economic crime, public corruption, Medicaid fraud, and patient abuse and neglect cases handled by the Bureau.

The Bureau works closely with police agencies throughout the State in investigating and prosecuting homicide and major drug trafficking

The Criminal Justice Bureau prosecutes major criminal cases throughout New Hampshire and handles the appeals of all criminal cases tried in New Hampshire courts.

cases. The Bureau also works closely with various administrative agencies such as the Department of Health and Human Services, the Insurance Commissioner's Office, and the Department of Revenue to investigate and prosecute crimes unique to areas within those agencies' purviews.

The Economic Crime Unit

The Economic Crime Unit prosecutes complex thefts and related crimes. Typical cases involve thefts of at least \$100,000, thefts by fiduciaries of at least \$50,000, or fraudulent acts that have multi-county or statewide impact. The investigation and prosecution of these cases often requires detailed analyses of various financial and business records to trace the disposition of stolen assets and to determine the methods used to steal them. Investigations conducted by the Economic Crime Unit generally involve presentations to investigative Grand Juries, the execution of search warrants, and the employment of forensic accounting expertise. Consequently, both the investigation and pretrial preparation of these cases tend to be protracted and require the commitment of extensive staff time and other resources. The trials of these cases also tend to be lengthy; most last at least one week and many last several weeks.

During the biennium, the Economic Crime Unit (ECU) obtained convictions by either plea or trial in approximately 40 cases. Several of these prosecutions stemmed from an investigation of illegal gambling in Hillsborough, Rockingham, and Merrimack counties. As a result of the coordinated efforts of the Attorney General's Office, New Hampshire State Police, the New Hampshire Liquor Commission, the Manchester Police Department, and other local police departments, the ECU successfully prosecuted a number of individuals and corporations for illegal gambling. Among those convicted were Ronald Enderson and John Astarita, both of whom participated in a gambling operation that involved proceeds of hundreds of thousands dollars. Astarita was sentenced to six months suspended in the House of Corrections and ordered to forfeit \$120,000 of funds connected to the illegal gambling. Enderson was convicted after a week-long trial and sentenced to 12 months in the House of Corrections plus a fine of \$160,000. The Unit also obtained convictions on a number of businesses that sponsored or permitted illegal gambling on the premises. These businesses received fines ranging from \$5,000 to \$50,000 as part of their sentences.

During the same period, the ECU coordinated a multi-agency and multi-state investigation into a landmark computer hacking case. As a result, Dennis Moran, who used the screen name "Coolio," was convicted of three separate offense for hacking into, and altering information on, a

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number of computers around the country. Moran received a sentence of 12 months in the House of Corrections with 9 months, stand committed. He was also ordered to pay \$15,000 and work with the Department of Corrections to develop computer programs for inmates.

The ECU successfully prosecuted a number of individuals for theft. For example, Marie Dionne was convicted of stealing more than \$800,000 from the law firm where she worked as a paralegal over the course of approximately ten years. She received a sentence of four to fifteen years imprisonment. The ECU also investigated and prosecuted Charles Brewster for stealing \$400,000 from the Portsmouth Country Club during his tenure as treasurer of the club. He has not yet been sentenced for that offense.

Working in conjunction with the Medicaid Fraud Unit and the Longterm Care Ombudsman's Office, the ECU investigated and prosecuted Lorraine Gabusi for stealing \$250,000 from her disabled sister and her brother who was dying of cancer, both of whom lived in Milan, New Hampshire. Gabusi gained access to her brother's money, promising to use it to care for their sister. Instead she transferred the money into her own accounts and filed a fraudulent Medicaid application, seeking to have her sister admitted to a nursing home on state assistance. For her conduct, Gabusi was sentenced to a term a five to ten years imprisonment, with one and one-half years suspended from the minimum.

The Economic Crime Unit investigated and prosecuted a number of individuals who breached their fiduciary duties by committing theft. Among those prosecuted were Myron Bates and Diane Pinard. Mr. Bates, the treasurer of Coe-Brown Academy in Northwood, was convicted of stealing approximately \$250,000 from the school. He was sentenced to five to ten years with two years stand committed. Ms. Pinard was prosecuted for stealing approximately \$150,000 from a disabled woman for whom she was providing financial services. She received a sentence of five to ten years imprisonment, with three and one-half years suspended from the minimum sentence.

Working in cooperation with the Consumer Protection Bureau, the ECU prosecuted William Vaughn of theft and violations of the criminal consumer protection act. Vaughn owned a manufactured housing business. He accepted payments, amounting to approximately \$312,000, toward the purchase and manufacture of homes and then diverted those funds to his own personal use. He was convicted and sentenced to three to six years imprisonment, and ordered to pay 15% of his gross income to the victims in restitution.

The Public Integrity Crime Unit

The Public Integrity Crime Unit investigates and prosecutes public officials who engage in a wide variety of criminal conduct during the course of their official duties. Many of these cases involve economic crimes, such as embezzling public funds. Other cases involve misuse of the official's position of authority to obtain benefits to which the official would otherwise not be entitled. The cases can also involve crimes of violence or sexual misconduct by public officials.

In February, 2000, separate referrals were made to the Attorney General by the Chief Justice of the New Hampshire Supreme Court and the Judicial Conduct Committee. The referrals, which described the same basic factual pattern involving conduct at the Supreme Court, contained allegations that could constitute criminal behavior by Justice Stephen Thayer. The Attorney General was faced with the obligation to investigate thoroughly the criminal allegations and the duty to continue to provide representation for the other justices of the Supreme Court who were already being sued in federal civil court by Justice Thayer. Two separate groups were created and "firewalled" from each other and from other members of the office. One group was not told of the referrals and consisted of two civil lawyers who represented the judges in the federal court until outside counsel was secured and this group withdrew from representation. The other group was lead by the Attorney General and conducted a full investigation of the matters raised in regard to Justice Thayer. The investigation included witness interviews in order to reach a full understanding of potential defenses that would be raised by Justice Thayer based on the Court's past practices.

A determination was made that conduct had occurred which constituted criminal action by Justice Thayer prohibited by RSA 640:3, I(b) (improper influence), RSA 643:1 (official oppression), RSA 641:5 (witness tampering), and RSA 642:1 (obstructing government administration). Grand jury time was reserved in preparation of fully litigating the case. Justice Thayer offered to resign from the Supreme Court in return for the Attorney General's forbearance from presenting criminal charges against him to the grand jury. The Attorney General weighed several factors including the litigation risks attendant to carrying the case to trial and Justice Thayer's long public service and accepted Justice Thayer's offer.

Under RSA 91-A and New Hampshire case law, once the case was ended, the file became public. A report was prepared and issued on March 31, 2000 detailing the investigation and resolution of the matter.

The Public Integrity Crime Unit investigates and prosecutes public officials who commit crimes in the course of their official duties. Many of these cases involve economic crimes such as embezzling public funds, while others involve violent crimes.

During the biennium, the Unit investigated and prosecuted a number of public officials for stealing money from the government. For example, the Unit, working in conjunction with the Department of Safety, convicted Carole Simmonds, a clerk in the Division of Motor Vehicles, for stealing approximately \$170,000 in motor vehicle license and registration fees. She was sentenced to three to ten years imprisonment. The Unit also successfully prosecuted Valerie Litvin, who worked as a clerk in the collections department for the City of Berlin. She was convicted of stealing more than \$40,000 from the city and received a sentence of five to ten years imprisonment, with three and one-half years suspended from the minimum. Rosemarie McNamara and Dana Crowell, town managers for the Town of Ashland and Amherst respectively, were each prosecuted for stealing significant sums of money from the towns during their employment. Ms. McNamara, who stole over \$100,000, received a sentence of five to ten years imprisonment, with three years suspended from the minimum sentence. Mr. Crowell, who stole approximately \$50,000, will serve a minimum of twelve months imprisonment

The Public Integrity Unit, working in conjunction with the United States Attorney's Office in New Hampshire, conducted an extensive investigation into allegations of sexual abuse by correctional officers against inmates at the Hillsborough County House of Corrections. The investigation led to criminal charges against several individuals.

Like economic crime cases, most public integrity crime cases are complex and require substantial staff and other resources to investigate and prosecute. In pursuing these matters, the Public Integrity Crime Unit routinely conducts forensic accounting analyses of government financial records, makes presentations to investigative Grand Juries, and consults with various experts. The Public Integrity Crime Unit also investigates every incident in which a New Hampshire police officer uses deadly force in the course of his or her duties. These investigations typically involve immediately responding to the scene, participating in interviews with the officers involved, and reviewing the forensic evidence. The Unit reviews each of these incidents to determine whether the use of deadly force was legally justified.

Drug Prosecution Unit

The Drug Prosecution Unit prosecutes major drug trafficking cases throughout the State. During the biennium, the unit opened one hundred seventy-six such cases. Most of these cases involve conspiracies to distribute large quantities of heroin, cocaine, marijuana, and other danger drugs in New Hampshire. The Unit works closely with the Attorney General's Drug Task Force, the New Hampshire State Police Narcotics Investigation Unit, D.E.A., and the narcotics units of local law

The Public Integrity Crime Unit investigates every incident in which a New Hampshire police officer uses deadly force in the course of his or her duties. The Unit reviews each of these incidents to determine whether the use of deadly force was legally justified.

enforcement agencies. It provides daily support to these agencies, assisting them with their investigations and advising them in specialized techniques like the proper use of electronic surveillance.

In the biennium, the Drug Prosecution Unit successfully prosecuted several large-scale drug traffickers. Among these was Rafael Rodriguez, who sold approximately thirty-six grams of heroin to an undercover police officer. He was convicted of multiple counts of sale of a controlled drug and was sentenced to the New Hampshire State Prison for ten to thirty years.

During the same period, the Drug Prosecution Unit conducted two wide-spread investigations involving the use of wiretap interceptions, which resulted in numerous arrests. One of these investigations led to the arrest of Melvin Ricker and numerous associates in the Rochester area. Ricker was convicted of conspiracy to sell a controlled drug, subsequent offense and was sentenced to the New Hampshire State Prison for seven and one-half to fifteen years with two and one-half years suspended from the minimum sentence. The other wiretap investigation resulted in the arrest of Angel Roldan and thirteen associates. The information obtained from the wiretap intercepts provided police with probable cause to arrest Roldan and his co-conspirators in Massachusetts and seize three loaded, stolen firearms from their vehicle. This arrest successfully thwarted Roldan's plan to conduct an armed home invasion for the purpose of stealing a substantial quantity of drugs and to murder the individual residing in the targeted home. Charges against Roldan, which range from being a drug enterprise leader to conspiracy to commit murder, are currently pending. The charges against his associates, consisting of conspiracy to distribute cocaine and/or conspiracy to commit murder, are scheduled for trial in early 2002.

The danger associated with large scale drug dealing has become increasingly evident in the cases handled by the Drug Prosecution Unit. The Roldan investigation is one such example of that phenomenon. Another investigation led to the arrest of Timothy Halpin and Steven Summa, both of whom armed themselves with loaded guns to engage in a drug transaction involving approximately fifty pounds of marijuana. Halpin was convicted of sale of marijuana, conspiracy to sell marijuana and felonious use of a firearm. He was sentenced to the New Hampshire State Prison for seven and one-half to twenty years. After exercising his right to appeal his sentence to the Sentence Review Board, his sentence was increased to eight and one-half to twenty years. This increase was based on Halpin carrying a loaded, concealed firearm to a major drug transaction.

The Drug Prosecution Unit prosecutes major drug trafficking cases. Most of these cases involve conspiracies to distribute large quantities of heroin, cocaine, marijuana, and other dangerous drugs in New Hampshire.

The Drug Prosecution Unit assisted in two separate multi-agency investigations in Derry. Each investigation lead to the arrest of significant cocaine traffickers and a total seizure of approximately two kilograms of cocaine. Other investigations across the State have resulted in the seizure of dramatically increasing quantities of drugs, and the prosecution of numerous individuals for the sale or possession of quantities of cocaine ranging from multiple ounces to multiple kilograms.

Over the biennium, the Drug Prosecution Unit has experienced an increase in prosecutions for “club” drugs such as ecstasy and ketamine. For example, Zavory Miller was convicted for possession with the intent to sell ecstasy and sentenced to the New Hampshire State Prison for ten to twenty years with two years to be suspended from the minimum upon his successful completion of the Summit House Program. The investigation leading to Miller’s arrest resulted in the seizure of in excess of four thousand pills of Ecstasy, the largest seizure in the State’s history. Police also seized four hundred vials of ketamine, commonly known as the date rape drug, five pounds of high grade marijuana and approximately \$13,000.00 from Miller’s residence.

The Drug Prosecution Unit is currently prosecuting seven individuals in Federal District Court in a joint prosecution with the United States Attorney’s office. These individuals are charged with conspiring to distribute large quantities of marijuana obtained from a source in New York, ranging from several hundred to several thousand pounds, in the Nashua area. Four of these individuals are also charged with money laundering in connection with the proceeds of drug sales. These matters are scheduled for trial in the spring of 2002.

The Drug Prosecution Unit continues to prosecute all forfeiture actions under New Hampshire’s Controlled Drug Act. Through these prosecutions, the State seizes illicit profits and property in the hands of drug dealers that would otherwise go to facilitate the narcotics trade. Once forfeited, the property is used to offset the cost of drugs investigations and to fund drug treatment programs. During the last biennium, the Unit prosecuted 126 forfeitures, involving \$63,237.00 in cash, various motor vehicles, firearms, and electronics.

Drug Task Force

The New Hampshire Drug Task Force (DTF) was started in 1986 as a statewide multi-jurisdictional effort to combat the increasing adverse impact of illicit drugs on the State. It started as a single six-person unit and has since expanded to twenty-nine people in four regional offices covering the seacoast, central, western, and northern regions of the State. Administered by the Attorney General’s Office, the DTF is

The primary mission of the DTF is to enforce the laws under RSA 318-B and to provide leadership, cooperation, coordination, and support to all local, county, state, and federal law enforcement agencies in combating the drug problem in New Hampshire.

comprised of investigators from that office as well as police officers from local, county and state police departments. The departments loan police officers to the DTF for a period of several years to serve as undercover investigators, and use federal grant money to subsidize their salaries.

The primary mission of the DTF is to enforce the laws under RSA 318-B and to provide leadership, cooperation, coordination, and support to all local, county, state, and federal law enforcement agencies in combating the drug problem in New Hampshire. Over the course of the biennium, the DTF was involved in 1225 investigations, leading to 354 arrests. Among those investigations was one conducted in southern New Hampshire that resulted in the arrest of twenty-five individuals on various drug-related offenses. One of the arrested individuals supplied information that led to the arrest of a person who was wanted in connection with an armed home invasion and shooting in Manchester. Another example of the DTF's work was a narcotics investigation of a large-scale cocaine dealer in the northern region of the State. The information gained through that investigation led investigators to a larger-scale dealer in Lynn, Massachusetts and, ultimately, the shut down of a major cocaine distribution network. Over \$500,000 in cash, property, vehicles, guns and several kilograms of cocaine were seized during that investigation.

The DTF provides specialized training in the area of drug enforcement to all DTF participants. During the last biennium, each participating investigator received approximately 120 hours of such training.

Appellate Unit

The Appellate Unit represents the State on all appeals from state criminal convictions, both in the New Hampshire Supreme Court and the federal court system. Approximately 95% of the unit's work involves cases before the New Hampshire Supreme Court.

The work of the Appellate Unit is central to the development of the criminal law in this State. It regularly deals with issues such as the constitutionality of a criminal statute, whether a search conducted by a police officer violated a person's constitutional rights, or whether a trial court's decision to limit cross-examination of a witness violated a defendant's constitutional right to confront his or her accusers. The court opinions that result from these cases provide legal guidance to law enforcement officers, prosecutors, and the courts throughout the State.

While the vast majority of the unit's work before the New Hampshire Supreme Court involves defending the State on appeals filed

The Appellate Unit represents the State in all appeals of criminal cases accepted by the New Hampshire Supreme Court and in all criminal cases that are appealed to federal courts. Because these cases help define New Hampshire law, the work of the Appellate Unit has a statewide impact on criminal law enforcement.

by criminal defendants, each year the unit initiates a small number of appeals on behalf of the State. Such an appeal typically involves a challenge to a trial court's suppression of evidence or the dismissal of a criminal charge. During the biennium, eight such appeals were filed.

In every appellate case, an attorney in the Appellate Unit researches the applicable law and writes a legal brief in support of the State's position. With relatively rare exceptions, the attorney also appears before the appellate court for oral argument. The issues raised in these cases range from the relatively straightforward to the highly complex and novel. Some cases require several weeks of concentrated work to research and draft the State's brief.

Over the biennium, the Appellate Unit grew from two to three full-time attorneys. It filed one hundred and sixty legal briefs with the New Hampshire Supreme Court, three with the First Circuit Court of Appeals, and two with the United States Supreme Court.

In addition to their appellate responsibilities, the members of the Appellate Unit regularly consult with local prosecutors seeking assistance. They provide information on the current status of New Hampshire criminal law, suggest strategies to approach legal issues, and offer assistance in dealing with an adverse ruling of the trial court.

Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit ("Unit") receives 75% federal funding to detect, investigate, prosecute, and prevent: (1) billing fraud and abuse committed against New Hampshire's Medicaid Program by health care providers; (2) fraud and abuse in the administration of the Medicaid Program; and (3) financial exploitation and physical abuse committed against residents of nursing homes and residential care facilities. There are several thousand enrolled Medicaid providers. More than 10,000 individuals reside in nursing homes and residential care facilities. The Unit relies upon civil and criminal fraud statutes in carrying out its functions. The staff includes two attorneys, five professional investigators, and one legal assistant.

During the biennium, the Unit obtained eighteen criminal convictions, two of which involved health care provider fraud. The other sixteen convictions involved the abuse or financial exploitation of persons living in nursing homes or residential care facilities. The Unit's combined criminal and civil recoveries from fines, penalties and restitution totaled \$954,056; an increase of almost threefold over the previous biennium.

During the biennium, the Medicaid Fraud Control Unit continued to actively investigate and prosecute health care fraud in the State's Medicaid program and devoted increased resources to cases of abuse and exploitation of nursing home residents.

The following are examples of health care fraud and abuse cases that the Unit concluded during the biennium. In *State v. Great Bay Chair Car Service*, the defendant paid \$95,000 to resolve allegations that it billed for unnecessary wheelchair transportation services. In *State v. Lincare, Inc.*, the defendant paid \$90,000 to resolve allegations that it violated the State's "usual and customary" law when it billed substantially more to the Medicaid program for latex gloves than it charged its other customers. In *State v. Best Drug*, the defendant pharmacy paid \$63,000 to settle civil allegations filed under the Medicaid False Claims Act that it improperly billed for multiple dispensing fees. In *State v. Interim Healthcare*, the defendant paid \$96,400 to settle allegations that it systematically overbilled Medicaid for nursing services. In *State v. Khozak*, the defendant was convicted for fraudulently billing interpreter services and ordered to pay criminal and civil restitution totaling \$49,000.

Among the abuse and financial exploitation cases successfully resolved during the biennium was *State v. Batchelder*. The defendant was convicted and jailed for one year for stealing \$79,000 from a nursing home resident for whom she served as power of attorney. In *State v. Jobin*, the defendant was convicted and made to repay \$39,000 that was diverted while serving as power of attorney for her father. In *State v. Hall*, the defendant was convicted and ordered to repay \$28,000 that he diverted while serving as power of attorney for his mother-in-law. In *State v. Clark*, the defendant, a certified nursing assistant, was convicted of multiple charges for stealing from five nursing home residents at three different facilities. In *State v. Welch*, the defendant, a neurologist formerly employed at the State's psychiatric hospital, was indicted earlier this year for the alleged sexual assault of a patient who was being detained at the facility. His trial is scheduled for January of 2002.

Training & Continuing Legal Education Programs

The Criminal Justice Bureau regularly teaches various criminal law and constitutional law classes at Police Standards & Training (New Hampshire's police academy). Every academy class of new police officers receives several hours of legal instruction from Criminal Justice Bureau attorneys. The Bureau also provides instructors for several seminars and in-service training programs designed for experienced police officers.

The Bureau is also committed to providing instruction and legal support for police officers on the enforcement of DWI laws. Every year the Bureau provides training to local police departments on new developments in DWI law enforcement. In the biennium the Bureau taught about six such seminars to police departments around the State. The Bureau also coordinates and provides some of the instruction for the

The Criminal Justice Bureau teaches criminal law and constitutional law classes at Police Standards & Training and provides training to local police departments on new developments in DWI law enforcement. During the last biennium, the Bureau presented seminars on developments in New Hampshire's criminal law, the effective use of investigative grand juries, prosecutorial ethics, prosecuting juvenile cases, and prosecuting domestic violence cases.

annual Jay McDuffee Motor Vehicle Homicide Seminar. This program provides specialized training to New Hampshire police officers and prosecutors in the investigation of vehicle offenses.

Every year the Criminal Justice Bureau also provides at least two days of continuing legal education to prosecutors across the State. During the biennium, that training included a two-day seminar on trial advocacy.

Reports Required Under RSA 570-A:10, III and RSA 570-B:7

During the biennium, the Attorney General filed four petitions for authorization to intercept telecommunications under RSA 570-A:7. Three of those petitions were extended three times and a fourth was extended once. Each petition and extension was granted. The Attorney General also applied for and received five orders to install and use pen register devices under RSA 570-B:4.

The Office of the Attorney General authorized police officers to conduct nine hundred and one (901) one-party interceptions under RSA 570-A:2, II(d) during the biennium.

B. HOMICIDE PROSECUTION UNIT

The five lawyers, one paralegal and one secretary who are assigned to the Homicide Unit are dedicated to protecting New Hampshire citizens and promoting public justice by providing trial advocacy and advice that enhance the Office's high professional standards of ethics and skill. The mission of the Homicide Unit is to (1) respond to the scenes of suspicious deaths and homicides to help law enforcement officers successfully answer legal questions that come up during their investigation; (2) work closely with law enforcement officers to investigate unresolved homicides; and (3) provide the highest quality of legal representation for the State of New Hampshire in homicide prosecutions from the initiation of criminal charges through trial, appeal and post trial litigation.

During the biennium, the Homicide Prosecution Unit supervised the investigation of thirty-six homicides. The Unit conducted homicide prosecutions on behalf of the State in nineteen of those thirty-six homicides. The seventeen that were not prosecuted included the following: seven murder/suicides; four homicides that were transferred to the Middlesex District Attorney's Office after it was determined that the murders occurred in Massachusetts and the bodies were disposed of in New Hampshire; two motor vehicle fatalities that were transferred to the Hillsborough County Attorney's Office and the Merrimack County Attorney's Office, respectively; and one negligent shooting that was transferred to the Grafton County Attorney's Office. The Unit declined to prosecute one case ruled a homicide because the death resulted from accidental conduct. Two of the thirty-six homicides remain unsolved.

The nineteen homicides in which the State filed charges resulted in six convictions following trials, seven guilty pleas (one case involved three defendants) and one acquittal after trial. Charges are still pending in seven of those homicides. The Unit is also assisting the Hillsborough County Attorney's Office in a pending attempted murder case. In addition, there are three pending investigations involving missing persons, for which the Unit is providing assistance to law enforcement.

During the biennium, members of the Unit conducted twelve homicide trials which resulted in ten convictions and two acquittals. In calendar year 2001, the Homicide Unit has conducted seven trials. One of the cases involved the 1981 murder of an elderly woman. The Unit was able to successfully prosecute the defendant for first degree murder twenty years later due to recent developments in forensic science. In addition, the Unit is currently prosecuting two other defendants for a murder that occurred over three years ago. One of those defendants has

During the biennium, members of the Homicide Unit conducted twelve trials, resulting in two acquittals and ten convictions.

pled guilty and the other's case is still pending.

The Unit was called to assist in the investigation of homicides caused by various means. Eleven of the thirty-six were caused by gunshots. Eleven of the homicides were due to stabbings or other sharp force injury. Six were caused by strangulation or asphyxia. The remaining nine homicides resulted from other causes, including blunt impact trauma, induced cardiovascular causes, and motor vehicle related incidents.

There were ten homicide cases pending when the biennium began. Four of those cases resulted in guilty verdicts after trial. One resulted in an acquittal after trial. Five resulted in guilty pleas.

C. Consumer Protection and Antitrust Bureau

1. Introduction

The Consumer Protection and Antitrust Bureau was first established in 1970. At the present time, there are 15 staff members and thirteen volunteers.

The Consumer Protection and Antitrust Bureau ("Bureau" or "CPAB") is responsible for ensuring that the consumer protection laws of New Hampshire are enforced, and that trades and businesses operating within the State of New Hampshire are conforming to governing statutes. The CPAB is responsible for the enforcement and regulation of over thirty statutes.

The Bureau is responsible for ensuring that the consumer protection laws of New Hampshire are enforced.

2. Direct Citizen Services

The Consumer Protection and Antitrust Bureau regards as one of its primary goals and responsibilities directly assisting the consumers of the State of New Hampshire with their questions and problems. The Bureau accomplishes this by providing two telephone lines dedicated to consumer calls, a voluntary mediation program, public education and outreach programs, and direct intervention.

a. Telephone Hotlines

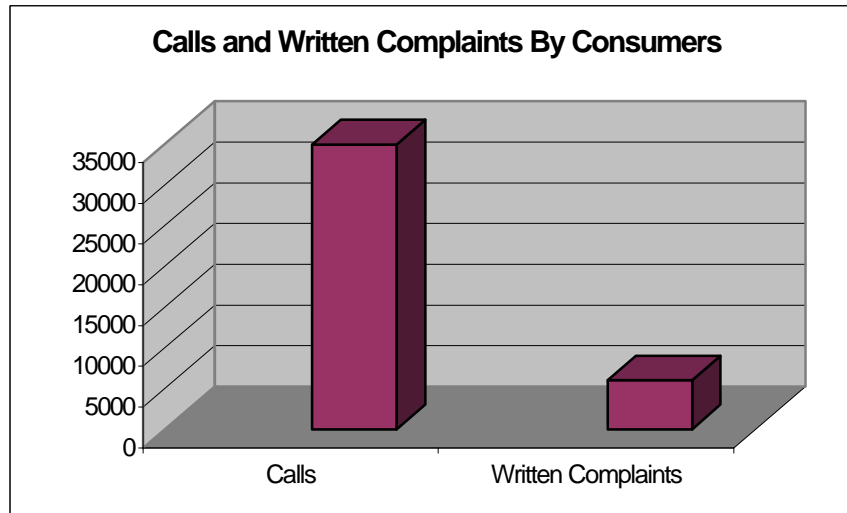
The CPAB has two incoming telephone lines dedicated to receive telephone inquiries from consumers. The CPAB's paralegals, secretaries, attorneys and volunteers received and responded to approximately 18,000 telephone calls and inquiries from businesses and citizens during Fiscal Year 2000 and approximately 17,000 calls during the Fiscal Year 2001, for a total of over 35,000 telephone calls during the biennium.

b. Consumer Complaints

In addition to telephone inquiries, the CPAB receives and responds to written complaints from consumers. The complaints are from citizens of New Hampshire and other states, and are about companies located in New Hampshire, other states and/or foreign countries.

During the biennium, over 6,000 written complaints were received and processed. Every complaint that comes into the

Office is read and reviewed by one paralegal and two attorneys. In the first instance, if appropriate, the complaint will be referred to the Bureau's Mediation Program. If the CPAB is unable to assist a consumer, their complaint is referred to other state or federal agencies, such as the Federal Trade Commission, Attorneys General's Offices in other states, private attorneys and/or small claims court.



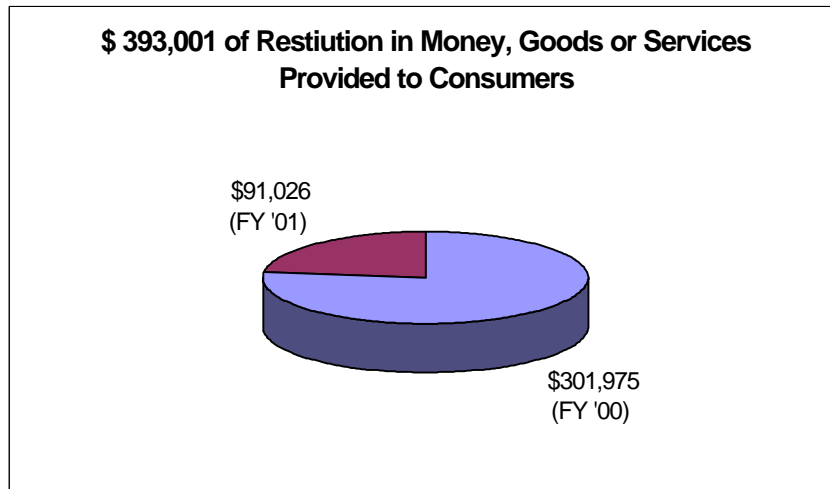
c. Mediation Program

The CPAB has utilized a voluntary Mediation Program since 1992. The Bureau recruits and trains qualified non-lawyer volunteers as Consumer Affairs Specialists. These Specialists help fellow citizens resolve many kinds of consumer complaints. Examples include problems with the purchase or repair of a car, door-to-door sales, debt collection, Internet auctions and credit reports. The Mediation Program allows the Bureau to assist and reach out to thousands more consumers than it would otherwise be able to assist. The Program is voluntary on the part of the businesses. However, it is generally well received by businesses and participation is high. In the biennium, 13 volunteers worked for the Mediation Program. The volunteers each worked a minimum of six hours per week, answering telephone calls for three hours and then spending the other three hours working on specific mediation cases.

In the biennium, over 2,500 cases were referred to the Mediation Program. The total restitution recovered for

The Bureau uses a voluntary Mediation Program to resolve many kinds of consumer complaints.

consumers in the form of either money, goods or services for Fiscal Year 2000 was \$301,975 and \$91,026 in Fiscal Year 2001, for a total of \$393,001.



d. Public Education and Outreach

A long-time goal of the Bureau that was realized in the last fiscal year was to greatly increase the number and types of outreach and education programs offered to the consumers of New Hampshire. In Fiscal Year 2001, a program geared to high school juniors and seniors was established and presented to high schools around the State. The program concentrated on areas where young adults first encounter consumer decisions and possible conflict, such as their first motor vehicle purchase, their first credit card, Internet purchases and landlord and tenant issues. The program was offered to over 20 schools and was presented at four area high schools. The ongoing goal is to reach all of the high schools in the State.

Another primary focus of the CPAB is New Hampshire's senior citizen population. During Fiscal Year 2000, members of the Consumer Protection staff and volunteers participated in more than 10 outreach programs. These included telemarketing fraud prevention programs to senior citizen groups around the State and participation in the Silver Celebration held on October 16, 1999 at the Center of N.H. in Manchester, N.H. During Fiscal Year 2001, more than 14 programs were presented to senior citizens. The Bureau also staffed Exhibition booths at the New Hampshire Conference on Aging sponsored by DEAS and at a Volunteer Fair in Concord.

New Hampshire's senior citizen population is one of the primary focuses of the Bureau.

During the last fiscal year, the CPAB finished the revisions, editing and printing of the Second Edition of the New Hampshire Consumer Sourcebook. This book is made available to consumers in the State of New Hampshire and contains voluminous information about consumers' rights and responsibilities. The Sourcebook provides detailed information on more than 60 topics of concern to New Hampshire consumers and includes over 1,000 legal principles and practical suggestions. The first edition was issued in 1996.

The New Hampshire Consumer Sourcebook is available on line.

The CPAB also maintains a very informative website for consumers, <http://webster.state.nh.us/nhdoj.consumer>. Not only does it contain the complete New Hampshire Consumer Sourcebook, but it also lists all of the press releases and consumer alerts issued by the Attorney General's Office. Plans are underway to include jumpsites to other helpful consumer-oriented websites as well.

e. National Consumer Protection Week

In the last biennium, the CPAB was very active during National Consumer Protection Week, which is always in mid-February. The Bureau provided "consumer tips" each day during National Consumer Protection Week which were broadcast on both of the local television stations in the State. Press releases were also issued on a number of the most pressing consumer topics. The staff and volunteers also offered a number of presentations to area groups and clubs around the State.

3. Enforcement

a. Administrative Subpoenas

Under the Consumer Protection Act, the Attorney General has the authority to subpoena businesses, witnesses and documents into the office whenever it is believed any violation of the Consumer Protection Act has occurred. During the biennium, the CPAB subpoenaed in more than ten businesses. In all instances the pending consumer complaints were resolved, and in many cases, the businesses agreed to changes in their business practices.

b. Civil Actions

During the biennium, the CPAB engaged in or concluded five consumer protection lawsuits or other enforcement actions involving a wide variety of unfair and/or deceptive trade practices.

One of the most significant cases the Bureau was involved with in the Fiscal Year 2000 was the case of *State of NH v. J.L. Oliver Enterprises and Jonathan L. Oliver*.

In January 2000, the CPAB began to receive a sudden influx of consumer complaints that J.L. Oliver Enterprises, Inc, a company engaged in the business of providing home heating oil throughout the State and in parts of Maine, had taken money in advance of providing services on prepaid oil contracts and was then failing to deliver the oil to consumers. Compounding the problem, the company was still aggressively advertising its prepaid heating fuel contracts. To protect the public from additional harm, the CPAB responded rapidly and on January 12, 2000 obtained a Temporary Restraining Order prohibiting the company from advertising or entering into any additional prepaid heating fuel contracts. The Bureau also responded to consumers with coordinated advice from the Governor's Office of Energy and Community Services in order to assist those persons placed most at risk by the company's conduct.

The CPAB also filed a Petition with the Court seeking an attachment of the company's property and alleging that J.L. Oliver had engaged in unfair and deceptive business practices. The Petition also sought consumer restitution, and a permanent injunctive order to prohibit the company from future misconduct.

After a five day trial, the Court found that Oliver Enterprises had engaged in unfair and deceptive business practices on four counts: by entering into sales contracts for prepaid home heating fuel without a reasonable likelihood of delivery; by falsely advertising prepaid oil contracts to consumers without any reasonable likelihood of delivery; by continuing to make false representations that the company would deliver fuel to consumers who had entered into prepaid oil contracts; and by failing to honor consumer requests for refunds. The Court ordered the payment of consumer restitution in the amount of \$625,414, and imposed civil penalties of \$137,000. The Court

During the biennium, the Bureau was involved in five consumer protection lawsuits.

ordered permanent injunctive relief against the company and against Mr. Oliver personally. Until he fully satisfies consumer restitution, he has been permanently enjoined while doing business in the State of New Hampshire from accepting any funds from consumers in advance of goods and services provided.

In the course of this matter, the Consumer Protection Bureau and the Office of the Attorney General received more than 2,300 phone calls from concerned consumers and more than 1,370 written consumer complaints.

In February 2001, the Bureau also successfully obtained a Temporary Restraining Order against a roofing company, that was taking customers' deposits and then not performing the contracted work. Over 20 consumers were affected. Subsequently, in April 2001, the owner signed an Assurance of Discontinuance in which he agreed to repay injured consumers and to refrain from any further violative conduct.

c. Criminal Prosecutions/Enforcement

The CPAB has continued to make a priority of the criminal prosecution of consumer protection violations with the conviction of William Vaughan for theft by deception and unfair and deceptive business practices.

On the 3rd of August, 2000, CPAB began receiving complaints about Northern Homes in Epsom, NH. The Bureau began immediately to investigate and determined that the owner of Northern Homes had been diverting deposits from consumers for new homes to his personal use. It was also discovered that the owner was doing the same with payments he received from finance companies. These payments were to pay for the homes that the owner had sold to consumers, but had never delivered. In many cases, the owner had never ordered the homes from the manufacturers, although he had taken in some instances full payment from the consumers.

By invoking the Federal Trade Commission's Holder in Due Course Rule, the Bureau was able to force the finance companies to purchase the homes for the consumers and to pay for their installation. One finance company estimated that the total amount it had to spend in order to reimburse consumers or to fulfill the terms of the sales contracts was in the range of \$700,000. These finance companies are now

The criminal prosecution of consumer protection violations is a priority of the Bureau.

pursuing the owner for reimbursement. As a result of the action by the CPAB, many consumers who would otherwise have lost both their place to live as well as their entire savings were able to obtain the homes they had purchased, and at no increased cost.

Mr. Vaughan pled guilty to Theft by Deception and to Unfair or Deceptive Business Acts or Practices, and was sentenced to jail and ordered to pay restitution to consumers.

d. Multi-State Litigation/Settlements

During the biennium, the CPAB participated in a number of multi-state actions in conjunction with many other states. The resulting Settlement Agreements secured close to \$1,500,000 in restitution for New Hampshire consumers and over \$105,000 in attorneys' fee recoveries for the State.

1. Nine West – March, 2000. This was an Antitrust settlement for price fixing. The State of New Hampshire recovered \$140,564, which was dispersed to two non-profit organizations: Dress for Success NH and the Women's Fund of New Hampshire. Additionally, the State received \$5,000 in attorneys' fees.
2. United States Purchasing Exchange – April, 2000. USPE is a large sweepstakes company, which does direct mail sales and merchandise throughout the country. Restitution for New Hampshire's consumers in the amount of \$106,000 was received. Attorney fees were received in the amount of \$20,000.
3. Toys 'R Us – June, 2000. This was initially brought as an antitrust case because of an agreement among Toys 'R Us and various toy manufacturers to deny or limit access to popular toy products to rival retailers. A Consent Decree was signed in 1999. As a result of this Consent Decree, on June 30, 2000 New Hampshire Reads, a children's literacy program, received \$57,581 as part of the settlement fund. Additionally, for the years 1998, 1999 and 2000, New Hampshire children have received approximately \$35,000 in free toys through the settlement, which was coordinated with the Marine's Toys for Tots program.

As a result of action by the Bureau, many consumers who would have otherwise lost their homes and savings were able to obtain the homes they had purchased at no increased cost.

4. Publishers Clearing House – August, 2000. The State of New Hampshire entered into a Settlement Agreement with Publishers Clearing House, a large sweepstakes company, because of unfair and deceptive practices. Consumers in New Hampshire will recover \$1,302,000 within the next two years. A total of \$58,000 in attorneys' fees will also be paid to the State of New Hampshire during the next two years.
5. Time, Inc. – August, 2000. A Settlement Agreement was entered into with Time, Inc., also a large sweepstakes company, which required dramatic changes to the information Time, Inc. provides to consumers in its sweepstakes mailers. A total of \$24,121 was recovered for New Hampshire consumers who were harmed by the unfair practices. Attorneys' fees in the amount of \$10,000 were also provided to the State.
6. Toysmart.com – August, 2000. This was a multi-state action against Toysmart.com, which filed for bankruptcy in Federal Court in the Commonwealth of Massachusetts. New Hampshire joined a number of other states in objecting to Toysmart's plan to sell their customers database despite agreeing to a privacy pledge while they were still in business. Ultimately, Toysmart.com signed a Settlement Agreement with New Hampshire, along with other states and agreed to destroy their customer database.
7. American Express Publishing Corporation – October, 2000. New Hampshire signed on to an Assurance of Discontinuance with American Express Publishing Corporation, which is one of the country's largest sweepstakes mailers. American Express agreed to make extensive changes in what it discloses to consumers in its sweepstakes mailers. The State of New Hampshire received \$3,258 for costs involved with obtaining the Assurance.
8. Bridgestone/Firestone – In October, 2000, New Hampshire joined a number of other states in a multi-state working group to deal with the Bridgestone/Firestone recall and treatment of consumers. New Hampshire participated in an agreement with Bridgestone/Firestone under which it would replace all consumer advisory tires. The working group is continuing its investigation in this case.

Consumers in New Hampshire will receive \$1,302,000 as a result of a settlement with Publishers Clearing House.

9. Readers Digest – March, 2001. This was a settlement where Readers Digest agreed to change their sweepstakes promotions. New Hampshire consumers are expected to receive approximately \$41,000 in restitution. Restitution will go to “high-activity customers,” which means any customer who spent over \$2,500 in any of the fiscal years between 1997 and 2000 will receive a pro rata share. Attorneys’ fees were awarded in the amount of \$10,000.
10. Mylan Laboratories – April, 2001. This was an antitrust Settlement Agreement for a price-fixing allegation against Mylan Laboratories. Approximately \$35,847 will be paid to the State of New Hampshire for restitution to New Hampshire consumers.
11. Tobacco – In 1998, the Attorneys General for New Hampshire and most other U. S. states and territories entered into a Master Settlement Agreement with the major manufacturers of cigarettes and other tobacco-related products to resolve claims for smoking-related health care treatment and challenges to industry advertising practices. The Master Settlement Agreement requires the settling manufacturers to make annual payments in perpetuity to the states based principally on the volume of cigarettes sold in each state. In fiscal years 2000 and 2001, the State of New Hampshire received a total of approximately \$95,000,000 in tobacco settlement revenue. The Master Settlement Agreement also obligates the settling states to enact, and diligently enforce, a so-called “Model Act” under which non-settling manufacturers are required to place in escrow, as a bond against future damages to the State, an amount of money roughly equivalent to the payments they would have assumed if they were parties to the settlement agreement. New Hampshire’s Model Act, RSA 541-C, became effective on July 1, 1999. During the biennium, CPAB attorneys worked in cooperation with Department of Revenue Administration staff to ensure compliance with this new law.

The Bureau continues to take an active role in enforcing the Master Settlement Agreement with tobacco companies.

e. Antitrust

In addition to the antitrust settlements discussed above, CPAB also participated in the following:

On June 21, 2001, New Hampshire along with the five other New England states concluded a regional antitrust action against Suiza Dairy Group and Stop and Shop Supermarkets. Suiza and Stop and Shop had entered into an agreement whereby Suiza would provide all dairy products to Stop and Shop, and in return, Suiza would take over ownership of Stop and Shop's milk processing plant located in Readville, Massachusetts, which would then be closed. Because Suiza already owns a high proportion of milk processing plants in New England, this arrangement would have led to an inordinate amount of market power on the part of Suiza.

The agreement between Suiza, Stop and Shop, and the six New England states eliminated Suiza's status as Stop and Shop's exclusive supplier of dairy products, and also required that the processing plant and its machinery and other assets be offered for sale to Suiza's New England based competitors. The Bureau continues to work with a larger, multi state group of attorneys general relating to another issue surrounding Suiza, wherein Suiza is attempting to merge with Dean Foods, Inc.

4. Registration/Regulation

a. Health Clubs

During the biennium, over 300 health clubs were registered. Included in this figure are 99 martial arts schools and 27 weight loss clinics.

During the biennium, the CPAB increased its efforts to enforce the State's registration and bonding requirements with respect to health clubs, martial arts academies and weight loss centers. The CPAB aggressively sought out health clubs that were not complying with the statutory registration requirement. Over 35 letters of deficiencies were issued and two requests for temporary injunctions against health clubs were filed with the Court, resulting in compliance.

One business health club owner was subpoenaed to resolve a number of outstanding deficiencies. The Bureau also worked with a health club to return over \$25,000 in deposits to consumers when the Bureau determined the club would not actually open.

During the biennium, over 300 health clubs were registered.

b. Condominium and Land Sales

During Fiscal Year 2000, 72 condominiums were either registered or exempted from registration and 115 subdivisions were registered and/or exempted. Close to \$55,000 was collected in registration fees. During Fiscal Year 2001, 86 condominiums were registered and 108 subdivisions. \$77,340 was received in registration fees.

The Bureau registered or exempted 158 condominiums during the biennium.

In April, 2001, the CPAB began the process of re-adoption of the Administrative Rules for the Land Sales and Condominium Acts. The process is a lengthy one, which has not yet been completed. The Public Hearings, however, have been held and the final proposed Rules have been submitted to the Joint Legislative Committee on Administrative Rules.

5. Administrative Prosecutions Unit

The Administrative Prosecutions Unit ("APU") of the CPAB regularly investigates and prosecutes professional misconduct cases before the following New Hampshire licensing bodies: the Board of Allied Health Professions; the Board of Chiropractic Examiners; the Board of Dental Examiners; the Joint Board of Licensure and Certification; the Board of Medicine; the Board of Mental Health Practice; and the Board of Pharmacy. During the biennium, CPAB attorneys and an investigator also investigated and prosecuted cases for the Board of Accountancy, the Board of Registration in Optometry, the Board of Registration of Funeral Directors and Embalmers, the Real Estate Appraiser Board, and the Board of Veterinary Medicine. Two attorneys, an investigator and a secretary staff the Administrative Prosecutions Unit.

During the biennium, the APU staff worked on a total of 209 cases that were referred by the various boards. Of this total, adjudicatory or reciprocal hearings were held for 21 cases. The rest remain open or were resolved by other types of dispositions including Settlement Agreements, Confidential Letters of Concern and No Further Action.

The Administrative Prosecutions Unit worked on 209 cases during the biennium.

During the biennium, the Boards served by the APU assessed \$48,000 in fines to licensees.

A summary of the matters handled during the biennium by the APU for the client boards follows:

Board of Allied Health Professions: The Board of Allied Health Professions ("Allied Health Board") consists of the governing boards for the professions of athletic trainers, occupational therapy, physical therapy, respiratory care therapy, and speech therapy. During the biennium, the APU worked on 7 cases and resolved 6 cases in the following manner: 2 settlement agreements; 1 referral for civil or criminal prosecution; and 1 recommendation of no further action. Issues presented in the Allied Health Board cases include: the unlicensed practice of a governed profession; dishonest or unprofessional conduct such as fraudulent billing; deceptive advertising; and poor or inadequate record keeping.

Board of Accountancy: The APU worked on 2 cases referred by the Accountancy Board. These cases were resolved by way of settlement agreements. The issues presented by Accountancy Board cases include: dishonesty, fraud or gross negligence in the performance of accountancy services; and violations of the applicable code of ethics, which requires such characters as independence and freedom from conflicts of interest.

Board of Chiropractic Examiners: The APU worked on 3 cases for the Board of Chiropractic Examiners ("Chiropractic Board"), all of which the Board adopted. The APU recommended that No Further Action was necessary against the licensees. Typical issues presented by the cases for the Chiropractic Board include: boundary violations, billing discrepancies, and unprofessional practices.

Board of Dental Examiners: The APU worked on 17 cases from the Board of Dental Examiners ("Dental Board"). The APU resolved 9 Dental Board cases in the following manner: 5 decisions and orders after hearing; 1 settlement agreement; 1 voluntary surrender of license; 1 letter of concern; and 1 recommendation of no further action. The issues presented by the Dental Board cases include: unprofessional conduct in the practice of dentistry; failure to follow current guidelines for infection control; and improper or dishonest billing.

Joint Board of Licensure and Certification: The Joint Board of Licensure and Certification ("Joint Board") encompasses the professions of architecture, engineering, forestry, geology, land surveying and natural science. During the biennium, the APU worked on 19 cases from the Joint Board and disposed of 15 cases, 5 by way of settlement agreements, 4 by letters of concern, and 6 by recommendation of no further action. Most of the cases referred to the APU by the Joint Board concern the professions of land surveying and engineering. The issues presented in the Joint Board cases include: unprofessional, unethical or

dishonorable conduct; the unlicensed practice of the governed professions; and violations of the applicable codes of ethics.

Board of Medicine: During the biennium, the APU worked on 98 cases from the Board of Medicine ("Medical Board") and disposed of or resolved 78 cases. These dispositions include: 13 decisions and orders after hearing; 23 settlement agreements or consent decrees approved by the Board; 17 letters of concern; and 25 no further action conclusions. Cases handled by the APU for the Medical Board include issues such as: gross or repeated negligence in the care of patients including misdiagnosis of terminal illnesses; unprofessional conduct including sexual improprieties with patients; the commission of felonies; over-prescribing medications for patients; substance abuse by physicians or physicians assistants; failing to maintain adequate medical records or provide records to patients upon request; and providing false information on applications for licensure.

Board of Mental Health Practice: During the biennium, the APU worked on 35 cases and disposed of 33 in the following manner: 3 decisions and orders after hearing; 7 settlement agreements or consent decrees; and 13 no further action conclusions. Issues presented in the Mental Health Board cases include: sexual misconduct with patients; unfitness or incompetence of a practitioner by reason of lack of knowledge or training; the discipline by another jurisdiction including suspension and revocation of licensure; poor or improper record keeping; and the unlicensed practice of a mental health profession.

Board of Registration in Optometry: The APU received 2 cases from the Board of Registration in Optometry ("Optometry Board") during the biennium. One case was resolved through a letter of concern to the licensee while the other was resolved with a recommendation of no further action. Issues presented by the Optometry Board cases include: unprofessional conduct and gross negligence in the care of patients.

Board of Pharmacy: During the biennium, the APU worked on 15 cases from the Board of Pharmacy ("Pharmacy Board") and disposed of or resolved 12 cases. These dispositions include: 2 decisions and orders after hearing; 7 settlement agreements or consent decrees approved by the Board; and 3 no further action conclusions. Cases handled by the APU for the Pharmacy Board include issues such as: providing prescriptions to the public without proper supervision, incomplete records and providing false information on applications for licensure.

The APU worked on 98 cases for the Board of Medicine.

Board of Registration of Funeral Directors and Embalmers: The APU worked on 4 cases from the Board of Registration of Funeral Directors and Embalmers ("Funeral Board") during the biennium. The APU disposed of 2 cases, 1 by way of a letter of concern and 1 by a recommendation of no further action. Issues presented by the Funeral Board cases include: billing and supervision of trainees.

Real Estate Appraiser Board: The APU worked on 2 cases from the Real Estate Appraiser Board ("Appraiser Board") and disposed of 2 during the biennium. The APU's dispositions included an order and decision after hearing, and a settlement agreement. The issues presented by the Appraiser Board cases included unprofessional conduct and the certification of appraisals done by unlicensed persons without inspection by a licensed appraiser.

Board of Veterinary Medicine: The APU worked on 10 cases from the Board of Veterinary Medicine ("Veterinary Board") and resolved or disposed of 6 during this biennium. These dispositions included: 2 settlement agreements; 3 letters of concern; and 1 recommendation of no further action. The issues presented in these and other cases for the Veterinary Board include: unprofessional conduct in the practice of veterinary medicine; and negligent or willful acts performed in a manner inconsistent with the health and safety of animals.

Although formally cast as licensing matters, many of the APU's cases involve significant issues of public safety and protection. The following summarizes some of the more significant cases handled by the APU during the biennium.

A licensed physician, who engaged in unprofessional conduct, boundary violations and sexual contact with a patient, was sanctioned by the Medical Board in the form of a suspension of his license for nineteen months, weekly peer review and review of his patient caseload, administrative oversight of his practice, close supervision of all contact with female patients, and a \$5,000 fine.

A licensed physician, who failed to use the necessary safety eye shields during a laser surgery on a patient's eyelids, causing damage to the patient's eyes, was sanctioned by the Medical Board, in the form of a restriction on his license prohibiting the performance of the surgery at issue until the physician completes continuing education, a six month stayed suspension of the physician's license, and an \$8,000 fine.

A licensed real estate appraiser, who signed appraisals performed by non-licensed individuals without personally inspecting the subject property and who submitted these deficient appraisals to a

Many of the APU's cases involve significant issues of public safety and protection.

mortgage company for the purposes of securing financing, was sanctioned by the Appraiser Board in the form of a five year suspension of the appraiser's license, a requirement for continuing education, and a \$10,000 fine, with \$7,500 of that fine held in abeyance on the condition of no further acts of professional misconduct during the period of suspension.

A licensed dentist who did not follow "universal precautions" in infection control was disciplined by the Dental Board in the form of a fine and temporary suspension of license and was required to adopt universal precautions before being permitted to resume practice.

6. Other Duties

During the biennium, staff attorneys in the CPAB also acted as Public Counsel, pursuant to RSA 162-H, in five cases before the Energy Site Evaluation Committee. Additionally, a CPAB staff attorney acted as Counsel to the Ballot Law Commission and participated in more than five hearings during the biennium.

The CPAB is also responsible for monitoring business Bankruptcy filings. In the biennium, 55 filings were received.

The CPAB is also responsible for monitoring private court actions that claim a violation of the Consumer Protection Act. During the biennium, the CPAB received notification from the various courts in the State that 81 cases were filed that included an allegation of a violation of the Consumer Protection Act.

*Bureau attorneys
also act as Public
Counsel before
the Energy Site
Evaluation
Committee.*

D. ENVIRONMENTAL PROTECTION BUREAU

The Environmental Protection Bureau ("Bureau") performs two central functions: enforcing environmental laws through civil and criminal court actions; and providing legal counsel and representation to state agencies responsible for the protection, control and preservation of the state's environment. The Bureau also exercises the common law authorities of the Attorney General to protect the environment, and offers guidance on those authorities to executive branch agencies and the legislature.

1. Enforcement

New Hampshire's environmental laws govern activities ranging from the proper management and disposal of hazardous waste to the filling of wetlands and construction of docks. These laws fall into three broad areas: protection of the state's waters; prevention of air pollution; and appropriate management of wastes. Environmental laws typically carry a range of enforcement mechanisms, from administrative remedies to civil penalties, injunctive relief, and criminal penalties. Working closely with the Department of Environmental Services, the Fish and Game Department, and other client agencies, the Bureau assesses whether an environmental law was violated, and takes an appropriate enforcement response.

a. Criminal Investigations And Enforcement

Investigation and prosecution of environmental crimes is a high priority for the Bureau. During the last biennium, the Bureau investigated and prosecuted a variety of environmental cases, often working closely with the Criminal Investigation Division of the federal Environmental Protection Agency. Many of the Bureau's criminal cases during the biennium related to falsification of laboratory reports or misconduct by operators of waste treatment facilities, who violated clear and specific responsibilities aimed at protecting public health and the environment.

During the biennium, the Bureau charged three wastewater treatment plant operators with environmental crimes. The Town of Greenville's plant operator pled guilty to charges involving the discharge of untreated sewage into the Souhegan River. He was sentenced to three months in the House of Corrections, with all but one weekend suspended, a surrender of his operator's license, a \$2,000.00 fine, one year of probation, and 100 hours of community service, 40 hours of which will involve speaking with treatment plant operators from around the state. In separate cases, the Kearsarge Regional operator and one

*The
Environmental
Protection Bureau
prosecutes
environmental
cases warranting
criminal
prosecution, the
imposition of civil
penalties, or the
issuance of an
injunction.*

of the operators at the Town of Sunapee wastewater treatment facility pled guilty to falsifying discharge monitoring reports. Under a negotiated agreement, the Superior Court sentenced each to a suspended two month sentence in the House of Corrections, surrender of his operator's license, six months of probation, a \$200 fine and 25 hours of community service.

The Bureau has responded to an ongoing trend of falsifying reports of laboratory analysis. Following the successful prosecution of a home inspector for falsifying reports of well water analysis, the Bureau worked with EPA investigators to examine laboratory reports of water analysis. This operation netted convictions against an out-of-state home builder and a Londonderry home builder for falsifying laboratory reports of well water analysis, class A misdemeanors. The Superior Court sentenced the Massachusetts developer's company to pay a \$30,000 fine (half suspended) and to complete 150 hours of community service for the Town of Salem, and ordered the developer to take corrective measures to ensure that its customers had safe drinking water. The Londonderry home builder entered guilty pleas on behalf of his corporation, which the Superior Court sentenced to pay a \$16,000.00 fine (half suspended) and to perform 120 hours of community service for the Town of Londonderry.

In a more classic environmental case, the Bureau charged a Concord man with two counts of illegal solid waste disposal, class A misdemeanors. The jury convicted the defendant on all charges for his role in dumping two truck loads of waste in the woods of Concord. The Superior Court sentenced the man to one year in the House of Corrections, suspended on the condition that he remove the solid waste in 30 days. He was also ordered to pay an \$800 fine, complete 100 hours of community service and placed on two years of probation.

The Bureau assisted the New York Attorney General and the Vermont Attorney General with two separate transboundary environmental crimes. The New York case ultimately resulted in the conviction of an individual and a company for unlawfully using petroleum contaminated soil as fill. The joint investigation with Vermont led to the conviction of an individual who illegally disposed of hazardous waste in Vermont that originated in Manchester, New Hampshire.

b. Civil Enforcement

During the biennium, the Bureau concluded a large number of civil enforcement cases, and collected a total of \$716,586.89 in cash civil penalties. Typically, defendants were made responsible for remedying the violation and any resulting harm, in addition to paying

Many of the Environmental Protection Bureau's criminal cases during the biennium related to falsification of laboratory reports or misconduct by operators of waste treatment facilities.

The Bureau's lawsuits led to the collection of \$716,586 in civil penalties, as well as several significant projects designed to provide supplemental benefits to the environmental media harmed by the violations.

monetary penalties. In a number of cases, the defendants agreed to undertake environmentally beneficial projects that went beyond correcting the harm they caused. Under appropriate circumstances, the Bureau allowed defendants to conduct such projects, known as Supplemental Environmental Projects, or “SEPs,” in lieu of a portion of the cash penalty.

Waste

In the *Webster Valve* case, a Franklin foundry charged with improper management of hazardous waste agreed to pay a \$215,126 civil forfeiture as well as performing an SEP costing \$350,000. Had the company not reported and remedied the violations promptly, the penalty would likely have been much higher. In the *Consolidated Recycling* case, the Hillsborough County Superior Court imposed a \$412,322 civil penalty after finding the defendants stored and abandoned spent fluorescent lights and lamp ballasts containing mercury and PCBs at two warehouses in Merrimack without the necessary DES permits. In another case against two individuals in Gorham, the Bureau received a \$12,500 penalty for illegal dumping of demolition debris, including asbestos.

Recently, during fiscal year 2002, the bureau also successfully concluded a significant hazardous waste case that was filed in 1997 against a Pelham junkyard owner for contaminating soil and groundwater with hazardous waste and PCBs. After years of litigation and negotiation with insurers, the *Gendron* case concluded with the State receiving \$640,000 in cleanup funds from a private insurer and eventual title to the property.

In the Superfund arena, the Bureau successfully concluded federal litigation against more than one hundred parties with responsibility for contaminating the *Auburn Road landfill* in Londonderry with hazardous waste. In March 2000, a global settlement of the matter among the federal and state governments and all parties was approved by the court. As part of the settlement, the State received \$65,000 for the costs it has incurred in addressing the site, and will continue to receive reimbursement for oversight costs. More significantly, continuing arsenic problems at the site will be fully addressed by the parties, in particular, Exxon and Waste Management, and the town receives title to most of the site, which it plans to use for recreational and other public purposes.

*The
Environmental
Protection Bureau
filed lawsuits for
violations of New
Hampshire’s air
pollution,
hazardous waste,
solid waste,
wetlands and
water pollution
control laws.*

Water

Most of the Bureau's water pollution cases involved harm to wetlands. In the *Travel Port* case, a Greenland truck stop agreed to pay a \$150,000 civil penalty plus a \$75,000 SEP for failing to construct an approved septic system, resulting in the discharge of thousands of gallons of raw sewage into the Great Bog, a significant wetland area. In another Greenland case, *Novel Iron Works* paid a \$75,000 civil penalty, with \$15,000 suspended contingent on successful restoration, for fill of 1.4 acres of wetlands without a permit.

In a case involving a massive unauthorized dredge and road construction project in the Cold River, the *Town of Alstead* agreed to a \$52,225 penalty, with \$10,000 suspended. The Town dredged an area of the Cold River nearly 20 times the area allowed under a DES wetlands permit, and constructed a 389-foot road into the river. In the *V&S Entertainment* case, the defendant agreed to a \$52,000 penalty, \$10K suspended, for wetlands violations including dewatering of 8 acres of Town-designated prime wetlands.

After years of litigation and negotiation, including both Superior Court and Governor and Council approval of the final version of the settlement, *Fay's Boat Yard* paid \$150,000 to the State as compensation for illegal profits on boat slips constructed in public waters without wetlands approvals. Finally, in an administrative fine case handled by the Bureau due to its magnitude, *Portland Natural Gas Transmission System* and *Bechtel* paid \$90,000 each for violations of state environmental laws and permit conditions during construction of a natural gas pipeline in Coos County. Most violations involved the discharge of sediment into streams and wetlands.

Air

In the *New Filcas* case, a Nashua company paid a \$41,519 cash penalty for violating state air limits on emission of volatile organic compounds and failing to pay emissions-based fees owed to the State. In the *Durgin & Crowell Lumber Co.* case, the company agreed to pay \$65,225 in civil penalties for violation of limitations on nitrogen oxide emissions. Although the penalty included cash payments, a significant portion of the penalty involved the company's performance of several different SEPs, including the company's commitment to use low-sulfur fuel in its vehicle fleet and training sessions for other companies on state controls for nitrogen oxide, sulfur dioxide and other emissions that harm New Hampshire's environment.

Most of the Bureau's water pollution cases involve harm to wetlands.

Most recently, the Bureau concluded a major enforcement action against *Velcro, USA*, for wholesale violation of the air permit for its Manchester facility. Although the settlement was concluded after the close of the biennium, most of the investigation leading up to the settlement was performed during the biennium and is worth mentioning here because it represents the largest civil penalty ever assessed for environmental violations. In a court-approved consent decree, Velcro agreed to a \$700,000 civil penalty, which is being satisfied through a combination of cash payments and nitrogen oxide emission reductions that far exceed regulatory requirements.

2. Agency Counsel And Representation

The Bureau plays a significant role in representing the interests of its client agencies. In situations where client agencies have spent state funds to address environmental or natural resource-related problems, the Bureau pursues cost recovery against responsible parties. During the biennium, the Bureau recovered a total of \$1,667,404.95 in costs.

The Bureau defends lawsuits and administrative challenges to the actions of its client agencies. The majority of these cases involved challenges to environmental programs implemented by the Department of Environmental Services ("DES"). For example, in the Great Bog matter, the Bureau defended DES's denial of approval for a development in Portsmouth that had the potential to degrade water quality associated with the Great Bog wetlands complex. The Bureau assisted in negotiating a resolution which ultimately resulted in conservation of a large area of high quality wildlife habitat adjacent to wetlands. The Bureau represented DES's wetlands program matters before the Wetlands Council and in Superior Court involving challenges to the issuance or denial of wetlands permits.

In other cases, Bureau attorneys defended client agencies from claims with potential monetary significance. Bureau attorneys secured the State's dismissal from the Marshall case, in which the plaintiff alleged that airborne pathogens from a nearby farm field where municipal sewage sludge was spread as fertilizer caused her son's death. In another case, the Bureau secured a favorable settlement in a "differing site condition" claim brought by the contractors on the Savage Well Superfund site remediation project. The contractors had sought more than \$700,000 in costs they attributed to production delays caused by underground conditions allegedly different from those shown on construction plans. In addition, the Bureau secured a dismissal of a monetary claim filed in federal district court against the Wetlands Bureau and the Department of Transportation in the Kentucky Fried Chicken of Portsmouth case.

During the biennium, Assistant Attorneys General recovered \$1,667,404 from responsible parties to recoup costs spent by the State to address environmental concerns.

The Bureau has been active in issues surrounding the State's petroleum reimbursement funds for oil discharges under RSA 146-D through -F. The Bureau advises both the Department and the Oil Fund Disbursement Board, which is administratively attached to the Department, on issues relating to reimbursement of cleanup costs to eligible owners. The Bureau has also represented the Board in a number of third party damage claims against oil facility owners to whom the Board is obliged to provide insurance. Through negotiation and litigation with other insurers and parties responsible for the oil discharges, the Bureau has worked to protect the integrity of the petroleum funds. An example of the Bureau's success in this area is a recently negotiated settlement in which the Board will receive \$200,000 in cleanup costs from a private insurer.

The Bureau assisted the Department of Environmental Services in working with the Legislature on environmental legislation during the biennium. For example, the Bureau worked with the Department and the Legislature in drafting new legislation to address asbestos-contaminated sites in New Hampshire. The Bureau also assisted the Department in resolving objections to a bill intended to clarify the dual authorities of the State and municipalities over junkyards and testified before the Legislature on a bill allowing for citizens suits against environmental violators. In addition, the Bureau participated in workgroup meetings on legislation addressing the New Hampshire-Vermont Solid Waste Compact and issues related to the Newport ash landfill. Bureau attorneys also assisted their client agencies in complex rulemaking proceedings. For example, a Bureau attorney drafted the Model Adjudicative Hearing Rules applicable to a variety of state agencies which were approved by the Joint Legislative Committee on Rulemaking on October 15, 1999.

The State's Brownfields program is designed to provide incentives for cleanup and redevelopment of hazardous waste contaminated properties. The Bureau is responsible for determining eligibility and issuing covenants-not-to-sue to eligible persons under the Brownfields program and works closely with the Department of Environmental Services in fulfilling those functions. During the biennium, the Bureau issued six Brownfields eligibility determinations and covenants not to sue, in addition to providing general advice to the Department in administering the program. Perhaps the most significant development project made possible through the Brownfields program is the Concord Lumber site, where the Marriott Hotel and Conference Center is now located. The Bureau worked with the City of Concord and the Capital Regional Development Corporation to complete this project and issued covenants not to sue from the State to both entities.

The Bureau assisted the Department of Environmental Services in working with the Legislature on environmental legislation during the biennium.

3. Regional Air Initiatives

The Bureau continues to take an active role in regional litigation initiatives to address the unique air pollution problems of the Northeastern states. During the biennium, the Bureau was involved in eight federal lawsuits involving federal regulation of ozone and acid rain-producing emissions. For example, in 1999, the Bureau intervened to support new federal ozone and fine particulate standards that were adopted to protect the public from chronic exposure to these pollutants which, in New Hampshire, originate primarily from upwind sources. This case, American Trucking Ass'n v. Whitman, has been ruled upon favorably by the United States Supreme Court, but is still in litigation. The Bureau continues to participate in briefing the courts on the importance of these standards to the people of New Hampshire.

The Bureau has intervened in support of federal regional haze rules (*American Corn Growers Ass'n v. EPA*), nitrogen oxide emission limitations on midwestern power plants and other major sources (*Michigan v. EPA*), and federal actions under section 126 of the Clean Air Act to reduce upwind sources' contribution to downwind air quality problems (*Appalachian Power Co. v. EPA*). In addition, the Bureau filed suit against EPA to require that secondary sulfur dioxide air quality standards be established to protect New Hampshire from the effects of acid precipitation (*New Hampshire, et al. v. EPA*).

Perhaps the most significant initiative that the Bureau has undertaken during the biennium is the 1999 filing of a citizens suit against an upwind midwestern utility, American Electric Power, for violation of Clean Air Act requirements and resulting harm to New Hampshire's air quality. The State is prosecuting the suit along with EPA and seven other northeastern states. The suit alleges that AEP constructed major, life-extending upgrades to eleven of its midwestern coal-fired power plants, and increased emissions that harm the northeastern states without installing state-of-the-art pollution controls as required by the Clean Air Act. The suit is still in the early stages of discovery and will likely not be ruled upon by the federal district court in Ohio for several years.

Environmental Protection Bureau attorneys have acted on behalf of the State of New Hampshire in national litigation to reduce the transport of air pollution to the northeastern states.